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**APPLICANT'S EXCEPTIONS RESPONDING TO PROPOSAL FOR DECISION**

**FOR DOCKET NUMBER**

**582-22-1885**

**FAXED RECEIVED DATE AND TIME**

**05/17/2023 @ 02:39 AM/PM**

**FILED BY**

**STEVE SELINGER**

**APPLICANT**

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582-22-1885  
5/17/2023 2:39 PM  
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ADMINISTRATIVE HEARINGS  
Pegah Nasrollahzadeh, CLERK

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STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Pegah Nasrollahzadeh, CLERK

**Zimbra****generaldocketfax@soah.labusa.com**

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**Re: SOAH DOCKET NO. 582-22-1885; TCEQ DOCKET NO. 2021-1216-MWD**

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**From :** Steve Selinger <steve\_selinger@yahoo.com>

Thu, May 18, 2023 09:05 AM

**Subject :** Re: SOAH DOCKET NO. 582-22-1885; TCEQ  
DOCKET NO. 2021-1216-MWD**To :** SOAH <generaldocketfax@soah.labusa.com>, Eli  
Martinez <eli.martinez@tceq.texas.gov>

On Wednesday, May 17, 2023 at 02:39:33 PM CDT, Steve Selinger <steve\_selinger@yahoo.com> wrote:

Please file the attached to the parties on the service list and the ALJ.

Thanks.

Steve Selinger

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SOAH DOCKET NO. 582-22-1885  
TCEQ DOCKET NO. 2021-1216-MWD

APPLICATION BY STEPHEN SELINGER  
FOR NEW TEXAS POLLUTANT DISCHARGE  
ELIMINATION SYSTEM PERMIT WQ1593201

## **APPLICANT STEPHEN SELINGER'S BRIEF AND EXCEPTIONS RESPONDING TO PROPOSAL FOR DECISION**

### **I. INTRODUCTION**

The Applicant does not object to the sections of the Proposal for Decision regarding the issues of regionalization, water quality, or licensing. The Applicant does object to the Proposal for Decision's treatment of the land ownership issue and will confine this brief to that issue.

### **II. FINDING OF FACT 59 (THAT SELINGER IS NOT THE OWNER OF THE PROPOSED FACILITY) IS DEMONSTRABLY FALSE AND SHOULD BE CHANGED**

Despite the fact that **ALL** of the evidence shows that Selinger is the record owner of the property as of late December 2022, the Proposal finds that Selinger is not the owner. The Proposal ignores the following:

1) Protestants' own witness testified that Selinger is the owner of the property. The Proposal **simply ignores** this inconvenient fact. As pointed out in Selinger's Closing Argument (page 3), Protestant's witness Tim Osting stated that as of the end of December 2022, Selinger was the land owner (page 28 line 24 to page 29, line 6 of attached transcript.)

Apparently, the ALJ was not paying attention at the hearing, did not read the transcript, and did not read Selinger's Closing Argument. For the Proposal (page 38) states:

"At the hearing, Protestants' witness Mr. Osting discussed the land ownership issue as did the ED's witness Mr. Rahim. Selinger had an opportunity to cross-examine both witnesses on that issue during the hearing. Because Selinger had multiple opportunities to present evidence and cross-examine witnesses to develop his case supporting issuance of the Draft Permit, he was not denied the opportunity to respond to Protestants' case."

As quoted above, Selinger did in fact cross-examine Osting, who did in fact admit that Selinger owned the property. Yet this crucial fact is ignored by the ALJ who implies that

Selinger passed on any cross examination of Osting. The Proposal for Decision should be changed to state that during Selinger's cross examination of Osting, Osting admitted that Selinger in fact owned the property as of the end of December 2022.

And contrary to the ALJ's statement that Selinger had "multiple opportunities to present evidence" (page 38), Selinger had **ZERO** opportunities to present evidence as the ALJ repeatedly declined to let him testify through out the Hearing. There is also **ZERO** evidence supporting the Proposal's bald assertion that Selinger had "multiple opportunities to present evidence" and the Proposal does not even try to cite any evidence for this assertion. In fact, all of the evidence, as discussed below, shows that Selinger had no opportunity to present evidence by testifying himself.

2) The Proposal mistakenly claims that Selinger did not prefile exhibits relating to land ownership. "However, Selinger was given the opportunity to prefile exhibits concerning the issue of land ownership by January 10, 2023, and he failed to do so. (fn 104)" (page 37 of Proposal.)

Contrary to this false statement, Selinger **twice** filed exhibits concerning land ownership prior to January 10. On December 12, 2022 he filed an affidavit stating he now owned the property as exhibit A and filed exhibit B as the deed showing he owned the property. On December 19, in his opposition to Protestants' motion for summary disposition, Selinger filed exhibit 2 as a declaration stating he owned the property, and filed exhibit 4 as the deed showing he owned the property.

The exhibits filed on December 19 were previously attached to Selinger's closing argument. To make it easy for the ALJ, and to see that they might actually be read this time, they are again attached to this filing as Exhibit 1.

The ALJ should take note of the definition of "pre" in the Merriam-Webster dictionary:

Pre: "earlier than, prior to, before"

There is no doubt that Selinger filed the Exhibit of the Deed as the ALJ admits it was filed as an exhibit in the Opposition to the Motion for Summary Judgment in footnote 102. There is no doubt that it was filed on December 19, 2022 as the filing stamp shows this. There is no doubt that December 19, 2022 comes **before, ie, pre** January 10, 2023, the deadline for prefiling. Thus there is no doubt that Selinger **prefiled** the Deed before the January 10 deadline. Yet the ALJ in her Proposal continues to endorse the utter falsehood that Selinger never prefiled the Deed in a timely manner.



In footnote 102, the ALJ states;

“For support, he [Selinger] cites to his own unsworn declaration, which he attached as an exhibit to his response to Protestants’ motion for summary judgment but did not prefile, include on an exhibit list, or offer into evidence during the hearing on the merits. Accordingly, Selinger’s unsworn declaration is not part of the evidentiary record in this case and will not be further discussed.”

(As an aside, it should be noted that Selinger’s unsworn declaration is signed under penalty of perjury and per Texas Civil Practice and Remedies Code 132.001, it may be used in lieu of a written sworn declaration.)

In admitting the undeniable fact that Selinger responded to Protestants’ motion for summary judgment, the ALJ must admit that Selinger filed the Deed, as the Deed was attached to the Applicant’s response, and emphasized in the response. And as the Deed was filed on December 19, 2022, the ALJ must admit that the Deed was **prefiled** before the deadline of January 23, 2023.

While it is technically true Selinger did not file the unsworn declaration on an Exhibit list, it is false that Selinger did not include the Deed on an exhibit list, as the footnote 102 suggests. Exhibit 2 to this brief is the filing list of witnesses and Exhibits Selinger filed on January 17, 2022—which is 1 day before the deadline of January 18. Exhibit 6 on that list is the Warranty Deed from Poetry Road LLC to Stephen Selinger dated December 7, 2022 (9 pages.) The 9 pages showing the Recorded Deed were attached to the exhibit list. Selinger did not enter the actual unsworn declaration on the Exhibit List as he was to testify about the contents of the declaration at the hearing—where he would be subject to cross examination. But he did enter the contents of the declaration, ie the Deed, onto the Exhibit List and was prepared to testify about it until the ALJ prevented this.

The ALJ makes a rather misleading claim in stating the Selinger did not offer the unsworn declaration into evidence. While it is technically true that Selinger did not offer the unsworn declaration itself into evidence, what he did offer into evidence was the **contents** of the affidavit, ie, the Deed showing Selinger owned the property. Exhibit 3 to this brief is the Hearing transcript. Pages 98 and 99 of the Hearing transcript reflect Selinger making an offer of proof that he would testify that the Deed showed he owned the property after December 7, 2022. It is rather ludicrous for the Proposal to state that the unsworn declaration should not be considered because it was not offered into evidence as the content of the unsworn declaration was offered into evidence but the ALJ did not allow it into evidence.

3) The ALJ violated her own ruling dated December 13, 2022. Such ruling stated:

“The parties may prefile exhibits related to land ownership by January 10, 2023 *and may present live testimony on the issue at the hearing on the merits.*” (emphasis added)

Yet the ALJ refused to let Selinger testify at the hearing on the issue of land ownership. This order allowing live testimony on the land ownership issue was not conditioned on a witness having prefiled testimony or exhibits. Independently of the bogus rationale to keep Selinger from testifying for not having prefiled testimony (see below for a discussion of this), or for not having prefiled exhibits, the December 13 order allows live testimony on land ownership and the ALJ violated her own order in not allowing Selinger to testify, and Selinger was timely listed as a witness to testify as shown in Exhibit 2.

At the end of the Protestants’ case, they rested and the Judge conveniently instructed the Court reporter to go off the record.

Page 40 line 7 Ms. Rogers: We rest our case.

Judge Davis: Thank you. All right. We can now proceed to the Applicant’s case. We have—let’s go off the record for a minute.”

During this off the record “time out” called by the ALJ, , Selinger stated that he would testify. But the Judge stated she would not allow this because Selinger did not pre-file any testimony. Although Selinger was timely listed as a witness to testify on the date to list exhibits and witnesses filed January 17, 2023, and attached as exhibit 2 to this brief, the judge still refused to let him testify. The ALJ’s order for prefiled testimony of September 26, 2022 listed a date for prefiled testimony to be filed but contained no statement or notice that only witnesses who had prefiled testimony would be allowed to testify.

By instructing the Court reporter to go off the record, the ALJ conveniently prevented any transcription of her refusal to allow Selinger to testify. But the ALJ’s refusal to allow Selinger to testify is readily inferred from the fact that Selinger was on the witness list to testify (Exhibit 2) , the ALJ’s refusal to allow any rebuttal testimony (page 94 of attached transcript) , and the offer of proof at the end of the hearing where Selinger testified as to the exhibits that the ALJ prevented him from entering into evidence. (pages 98, 99 of transcript)

TAC 155.429 (c)(1)(A) states that the judge **may require** the *direct* testimony of witnesses to be called at the hearing to be filed in writing prior to the hearing. But as noted in Applicant’s closing brief, the ALJ’s prefiling order of September 26, 2022

contained **no** such requirement that any witness must prefile their own direct testimony to be able to testify. All the notice gave was a deadline for prefiling testimony but stated no requirement that in order to testify, a witness must have prefiled testimony. Thus the TAC gave the ALJ no basis to exclude Selinger's direct testimony for not having prefiled his direct testimony.

Moreover, there is absolutely no permission for a judge to exclude *rebuttal* testimony contained in TAC 155.429(c)(1)(A). The TAC only discusses prefiling with respect to **direct** testimony yet the ALJ mistakenly used the excuse of lack of prefiling to also rule out any **rebuttal** testimony.

Independently of the first mistake by the ALJ in refusing to allow Selinger to testify on direct testimony if he had not prefiled (when her prefiling order never stated a witness would be excluded if they had not prefiled), the ALJ compounded her mistake by violating her own order of December 10 in not allowing Selinger to testify on the issue of land ownership. The ALJ order of December 10 imposed no requirement that to testify a witness must have prefiled testimony on the matter to be able to testify. Such an order would have made no sense as the prefiling deadline was several weeks before the ALJ even added land ownership as an issue on December 10. Yet the ALJ still went ahead and violated her own order of December 10 by refusing to allow Selinger to testify on the issue of land ownership—even though Selinger was on the witness list.

Selinger made an offer of proof at the end of the hearing about the exhibits (the deed and other excluded exhibits) he would have testified regarding, ie, that the deed showed Selinger owned the property, and that equitable ownership is a common term to describe the owner of a party in contract to purchase a piece of property, and that Selinger was in contract to purchase the property. (pages 98,99 transcript)

The Proposal (page 46) claims that Selinger made a “late argument in his closing brief based on equitable ownership” but that Selinger failed to present necessary evidence to address this claim. The Proposal is mistaken in this regard as well:

First, the argument regarding equitable ownership was not brought up late in the closing argument but was rather raised **immediately** by Selinger in response to the Motion to add land ownership as an issue in the December 12 filing of Selinger—only 7 days after the issue was raised in the December 5 filing of the Executive Director). Selinger pointed out that he was in contract to buy the property and later attached the Deed showing he owned the property in the affidavit shown as Exhibit A and the Deed as Exhibit B.

Second, the ALJ can hardly complain that sufficient evidence was not presented when it was she herself who prohibited Selinger from testifying and offering such evidence.

Third, the ALJ's remarks about Selinger providing "false information" (page 40 of Proposal for Decision) regarding ownership depend entirely upon whether the ownership is equitable ownership or legal ownership. But it was the ALJ herself who prevented evidence on this issue from being submitted—when she barred Selinger from testifying. If "ownership" is understood as equitable ownership, then no false information was on the application as Selinger was in contract to buy the land, was the equitable owner at the time the application was filed, and possessed the property interest that TCEQ staff said is required.

The Proposal (page 37) states that TAC 305.43(c) is not applicable because Selinger did not present written evidence from the actual landowner that authorized Selinger to apply. This argument of the ALJ is mistaken for three reasons. First, once the Draft Permit has been issued, the burden of proof shifts to the Protestants and the Protestants would have had to show Selinger did not have such consent. Second, the affidavit of Selinger in his filing of December 12, signed by Poetry Road LLC's managing member Selinger, stated that Selinger did have such consent to apply. Third, by improperly ruling that Selinger could not testify at the hearing, the ALJ prevented evidence from being entered into the record that Selinger had the written consent of Poetry Road LLC and Waxahachie Creek Ranck LLC to submit the application.

The common theme in all the mistakes of the Proposal is that the Proposal complains that there is not evidence when it was the mistaken rulings of the ALJ that kept the evidence from being accepted into the record in the first place.

Given this ALJ's consistent ignoring of the Osting admission, and the other issues identified above, the ALJ has created at a minimum an appearance of bias or prejudice against the Applicant on this matter.

### **III. SELINGER'S DUE PROCESS RIGHTS WERE TRAMPLED UPON AT THE HEARING AND IN THE PROPOSAL FOR DECISION**

The Proposal states that Selinger's due process rights were not violated because:

"Selinger was given the opportunity to prefile exhibits concerning the issue of land ownership by January 10, 2023, and he failed to do so. Fn 104" (page 37)

"Selinger had an opportunity to cross-examine both witnesses on that issue during the hearing on the merits. Because Selinger had multiple opportunities to present evidence

and cross-examine witnesses to develop his case supporting issuance of the Draft Permit, he was not denied his opportunity to respond to Protestants' case" (page 38)

Contrary to this statement in the Proposal, Selinger's due process and statutory rights were trampled upon by the following actions of the ALJ:

1) Selinger did prefile exhibits on both December 12 and December 19, accompanied by affidavits and the deed showing Selinger owned the property as of December 7, 2022. Yet the ALJ ignores these prefilings and falsely states that Selinger did not prefile any exhibits related to land ownership. This brief supplies the ALJ with the definition of "pre" so hopefully this mistake in the Proposal will be corrected.

2) Selinger did in fact cross-examine Protestants' witness Osting who did in fact admit Selinger owned the land as of the end of December 2022. This crucial admission by Protestants' witness was quoted and highlighted by Selinger's Closing Argument (page 3). Yet the Proposal intentionally omits this crucial admission. It is **ludicrous** to submit that Selinger's due process rights were upheld because he was allowed to cross-examine a witness when the crucial admission resulting from that cross-examination is **ignored** by the ALJ and her Proposal for Decision.

3) The ALJ violated her own December 13, 2022 order. Said order stated that the parties "may present live testimony on the issue at the hearing on the merits. Fn 1"

Yet the ALJ prevented Selinger from testifying at the hearing on the land ownership issue. It is again **ludicrous** to state that Selinger's due process rights were upheld when he was not given an opportunity to be heard on this crucial issue—with the ALJ contravening her own order. And it will not suffice to state that Selinger was denied because he did not prefile his direct testimony. The order adding land ownership as an issue and allowing testimony on the land ownership issue occurred weeks after the prefiling deadline, and no requirement to prefile testimony or exhibits was contained in the December 13, 2022 order allowing live testimony on the land ownership issue.

4) Selinger's due process rights were violated when the ALJ violated TAC 155.429 (c)(1)(A) by refusing to let Selinger testify on direct testimony for not having prefiled such testimony when her prefiling order contained no such requirement to prefile direct testimony to be able to testify.

5) Selinger's due process rights were violated when the ALJ mistakenly refused to allow Selinger to testify in **rebuttal** when there is no requirement to prefile testimony to testify as a rebuttal witness. See page 94 of transcript where Selinger inquires about when rebuttal starts, and the ALJ says there is no rebuttal. This is another clear violation of Selinger's due process right to be heard.

6) The ALJ violated Selinger's due process right to be heard when she violated 30 TAC 80.17 (c), which states that the applicant and the executive director may present additional evidence to support the draft permit if a party rebuts a presumption established under Subsection (i-1). In this case, Selinger was denied a chance to present any additional evidence to support the draft permit after Protestants rebutted a presumption because he was never allowed to testify.

7) Selinger's due process rights were violated by the ALJ's refusal to take the judicial notice of the recorded deed showing the property in the name of Selinger as of December 7, 2022. Judicial Notice Rule 201 (f) states that judicial notice "**may be taken at any stage of the proceeding.**" (emphasis added) and Rule 201 (d) states "a court **shall** take judicial notice if requested by a party and supplied with the necessary information." (emphasis added)

In her determined quest to suppress any reference to the deed showing Selinger owned the land, the ALJ violated her **mandatory** duty to take judicial notice. In the ALJ's order denying the request for judicial notice, it mistakenly states that Selinger made a motion to reopen the record. That is **not** the motion Selinger made. His motion was for the Court to take judicial notice of the document showing the recorded deed. The Court violated its **mandatory** duty to take such judicial notice.

There are occasions where judges have discretion to decide whether evidence is admitted, eg, Tex. R. Evid. 403, where courts may exclude prejudicial evidence. What happened in this Hearing is not such an occasion. The ALJ's repeated refusal to allow into evidence the Deed showing Selinger owned the property is not justified by appealing to the discretion judges have in other areas. When Rule 201 (d) says the judge **shall** take judicial notice, the law does not leave it to the discretion of the judge about whether to take notice. When 30 TAC 80.17 (c) states the Applicant **may** present additional evidence to support the draft permit after Protestants rebutted a presumption, it does **not** say Applicant may present additional evidence to support the draft permit only if the judges exercises her discretion to allow the Applicant to present additional evidence but rather straightforwardly give the Applicant the right to do say by saying the Applicant **may** present additional evidence. And surely no one can argue that the ALJ should only follow her own orders in her sole discretion about whether to follow her orders—as when she refused to allow Selinger to testify when her order said live testimony would be taken on land ownership and Selinger was on the witness list.

In totality, these actions of the ALJ demonstrate a repeated, concerted effort to suppress the fact that Selinger owned the property after December 7, 2022. In the suppression of such fact, and repeated denial for Selinger to testify on land ownership,

the ALJ repeatedly violated Selinger's due process right to be heard, as well as the various statutory rights detailed above.

And when—despite the Herculean efforts of the ALJ to suppress the truth—the evidence comes forth from Protestants' own witness Osting that Selinger owns the property as of late December 2022, the ALJ and her Proposal simply ignore the evidence.

In light of the suppression of such evidence of Selinger's land ownership, the denial of Selinger's right to testify, and the violation of Selinger's constitutional and statutory due process right to be heard, the ALJ has created at a minimum an appearance of bias or prejudice against Selinger.

#### IV. TRANSCRIPT COSTS

The invoice for the transcription costs is attached as Exhibit 3. The Protestants comprise the three parties of Ellis County, Ennis, and Waxahachie. The Protestants were unsuccessful on three of the four issues that were litigated and should ultimately be unsuccessful on the fourth issue of land ownership. The Protestants should bear all of the costs of the transcript. And at the least, the Protestants should bear 75% of the costs of the transcript. Exhibit 5 shows the total cost of \$1989.50 and that it was paid by Selinger. Selinger should be reimbursed the entire amount, or at least 75% of the amount, or \$1492.12

#### V. CONCLUSION

The Applicant does not object to the Proposal for Decision regarding the issues of regionalization, water quality, and licensing.

On the land ownership issue, the Applicant submits that the Hearing was a **sham and a travesty**. A crucial witness (Selinger) was prevented from testifying on land ownership through a series of unlawful rulings that violated Selinger's due process right to be heard.

And when cross examination showed that Selinger was in fact the property owner, the ALJ and her Proposal **simply ignore this crucial fact despite it having been emphasized in Selinger's Closing Argument**. The Proposal should revise Fact 59 to state that Selinger is the owner of the subject property, and state that the permit should be issued. If Fact 59 is not revised, after the testimony of Osting has been emphasized in Selinger's Closing argument as well as in this brief, a disinterested party would conclude the Proposal is intentionally opposed to the true facts of land ownership coming out.

What happened at the Hearing, and is reflected in this Proposal for Decision, was highly improper and irregular. The ALJ should correct the Proposal on the land ownership issue. If not, the Commission or District Court should correct it for her.

Respectfully submitted,

Stephen Selinger  
620 Truelove Trail, Southlake, TX 76092  
steve\_selinger@yahoo.com  
817-421-0731

### **CERTIFICATE OF SERVICE**

I hereby certify by my signature below that on this       day of May, 2023, a true and correct copy of the above and foregoing documents was forwarded via e-mail or regular mail to the parties on the Service List.

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Stephen Selinger



*Ex 1 - Proposal for Decision*

FILED  
582-22-1885  
12/19/2022 2:17 PM  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Carol Hale, CLERK

ACCEPTED  
582-22-1885  
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ADMINISTRATIVE HEARINGS  
Carol Hale, CLERK

SOAH DOCKET NO. 582-22-1885  
TCEQ DOCKET NO. 2021-1442-MWD

APPLICATION BY STEPHEN SELINGER FOR NEW TEXAS POLL UTANT  
DISCHARGE ELIMINATION SYSTEM PERMIT NO. WQ0015932001

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

**APPLICANT'S OPPOSITION TO PROTESTANTS' MOTION FOR SUMMARY  
DISPOSITION**

**I. The Regionalization Argument**

**A. Three mile argument**

Ennis own documents show that it does not have a treatment facility, or collection facility, within 3 miles that can serve this site. Exhibit 1 of the Gillespie and Selinger affidavits is an email from Jim Wehmeier, Director of Economic Development at Ennis, attaching costs of Ennis to provide wastewater service to the property.

The costs show that collection lines totaling 38,800 lineal feet need to be installed to serve this project. That is well beyond three miles, which totals only 15,840 lineal feet. In fact, it is 7.34 miles—so it is well beyond 3 miles. (The prefiled testimony of Gillespie omitted to add in the 2500 lineal feet on each of lines 10 and 11 of the engineer's estimate and came in with a slightly lower estimate; that oversight is corrected here.)

The City has stated that it has collection lines within 2.6 miles. But its own documents show that these lines are not sufficient to serve this property—not remotely sufficient.

**B. The cost argument**

Ennis' costs shown in exhibit 1 state that \$6,799,464 are the costs of the *minimum* improvements to serve the property. See the first note on exhibit A which states that these are the minimum improvements to serve the site and there is no accompanying estimate of what the maximum (or expected average) costs are. Hence it is impossible to know how much more than the 6.79 million it might cost to actually serve the property.



The costs for the applicant to provide its own wastewater solution are contained in exhibit 2 of the Gillespie and Selinger declarations. This cost is \$601,000 for a 100,000 gpd system, or basically 2.40 million dollars for 405,000 gpd, , or 4.39 million dollars less in capital costs than the City costs.

The Gillespie prefiled testimony detailed the difference (between City sewer versus Applicant 's wastewater plant) in operatioRal COsts over 5 yedrs to be 3.5 million dollars. When added to the higher capital costs of 4.39 million dollars, the total higher cost to connect to Ennis facilities is approximately 7.89 million dollars. (The prior Gillespie testimony rounded the Ennis capital cost to 7 million dollars, and hence a total difference of 8.1 million dollars. Without rounding, we arrive at the 7.89 million dollars increased cost of connecting to Ennis.)

As in the three mile argument, the City's own documents show it cannot remotely compete on a cost basis with the Applicant's system. Indeed, it would be strange for the Applicant to want to install his own system if the City could do it for less money.

The Protestants have effectively conceded the "cost" argument. The prefiled testimony of Protestants offers **no evidence** of what the numerical costs are of connecting to Ennis facilites versus the Applicant's wastewater plant—apparently recognizing the task is futile.

### **C. The "will serve" argument**

Because the City issued a vacuous "will serve" letter stating that it would provide sewer service, the City somehow contends that this letter entitles it to block issuance of the subject wastewater permit. The City letter never stated that the City was ready, willing and able to fund the improvements necessary to serve the site with wastewater. It never has shown that it has appropriated the minimum of \$6,799,464 to serve the project. It is easy to issue a letter stating Ennis will "serve" a property but the letter is rather worthless if it is not backed up with appropriated funds to actually serve the letter. In all likelihood, the letter was a sham—a tool designed to be used in future litigation as it is now being so used—and never backed up by any concrete action such as appropriating money to actually serve the property.

### **D. The "fail to request" argument**

The Applicant did not initially send a letter seeking service to Ennis because Ennis did not exercise proper diligence and never showed the boundaries of its CCN on the PUC website. Waxahachie exercised such diligence and was seni a letter requesting

service. But Ennis admits that it was later sent a letter, and indeed a formal petition, requesting sewer service. So it cannot truthfully state it was never sent a request for sewer service.

And the requirement to request service only applies to entities that have a treatment facility, or collection lines, that can serve a project located within three miles of the site. As detailed above, the collection lines needed to serve this project total 38,800 lineal feet—well beyond three miles. The “fail to request” fails for some of the same reasons the “three mile argument” fails.

#### E. TCEQ past precedents

The Selinger affidavit attaches the a print out (as exhibit 3) of the current TCEQ website (as of 12/17/22). The second page, in the section “How has TCEQ decided on wastewater regionalization in the past?” states that “TCEQ has not denied any wastewater permit actions based solely on regionalization,...

Given that TCEQ has *never* denied any wastewater permits in the past based solely upon regionalization, the subject permit would be a very poor one upon which to reverse such precedent.

In view of the lack of precedent for the summary disposition Protestants seek, and in view of the complete failure of the various Protestant arguments regarding regionalization, the Applicant suggests that the Court fashion its own motion to rule on a summary adjudication basis that regionalization is not a basis to deny the subject wastewater permit.

#### 2. The “land ownership” argument

Protestants title section B of their motion as:

“The Applicant does not own the property on which the proposed facility would be located.”

The Protestants first sentence of their argument is:

“The Protestants further request that the Application be denied because the Applicant does not own the property on which the proposed facility will be located.”



It is demonstrably false that Applicant Stephen Selinger does not own the property on which the facility will be located, ie, Selinger does in fact own the property on which the proposed facility will be located and did indeed provide proof of such ownership to Protestants. He provides such proof again (in exhibit 4) via the deed attached to his affidavit. Protestants acknowledge such proof of ownership on page 5 of their motion when they state Applicant "transferred the property on which the wastewater treatment facility would be located to himself as of December 7, 2022." The Protestants' motion seems aimed to deliberately obfuscate as it starts out by twice stating the Applicant does not own the Property and then belatedly admits the Applicant does in fact own the property.

On the date of the application, while Selinger had equitable ownership of the property via his existing contract to purchase the property, he was not yet the record owner as the escrow had not yet closed. See exhibit 5 citing the Westlaw and Brightmls statements that equitable title and ownership are established upon an executed purchase and sale agreement. The TCEQ application does not specify whether it is requesting the equitable owner (which Selinger was) or the record owner. When Selinger learned from the prefiled testimony of the Executive Director on December 5 that TCEQ wanted record ownership and not equitable ownership, Selinger promptly complied and transferred the property to reflect Selinger as record owner of the property on December 7. Thus Selinger is now both the applicant and record landowner as the property has been transferred to his name-and this is 100% consistent with the original application.

Protestants's closing sentence of its motion is both thoroughly muddled and demonstrably false. It states that:

"Because as of the date of the Application, the land on which the proposed wastewater treatment facility will be located is owned by Poetry Road LLC, and not the Applicant, the Applicant has submitted a false Application and has failed to meet his burden of proof with respect to ownership of the facility, and his rights to enter and use the property on which the facility will be located."

First, as of the date of the Application, the record owner of the subject land was Waxahachie Creek Ranch LLC, and not Poetry Road LLC (contrary to what was asserted by Protestants.) Stephen Selinger was in contract to buy the land and was the equitable owner; Selinger was not yet on title as the record owner but he had control over the disposition of the property. But as of the current date, and the date for the Hearing, Selinger owns (on record) both the land and the facility—100% consistent with the initial application



Second, with regard to Protestants' claim of failing the burden of proof with respect to ownership of the facility, there has been no change in ownership as the facility was always to be owned by Selinger and is still to be owned by Selinger. That statement of Protestants is a complete non sequitur and shows an inability by Protestants to distinguish between ownership of the facility and ownership of the land.

Third, with regard to Protestants' claim of failing the burden of proof regarding the right to enter and use the property on which the facility is to be located, it could not be more clear that Selinger has the right to enter and use the property as he owns both the land and the facility. Protestants have taken the nonsensical position that Selinger does not have a right to use his own land to locate and operate his own facility—an absurdity. The statement of Protestants that Selinger has failed to meet his burden regarding his rights to enter and use the Selinger property for the Selinger facility simply makes no sense.

Protestants complained when the property was not in the name of Selinger. The property is then put in the name of Selinger yet Protestants are somehow still complaining that there is some question of whether Selinger can use his OWN land to operate his own facility. That complaint is nonsense and without merit.

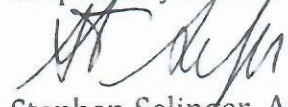
## CONCLUSION

The Applicant has demonstrated that there is no merit to the regionalization argument, and that there is no merit to the argument that the Applicant does not own the property on which the facility is to be located.

In the interest of lessening the time and expense involved with the Hearing, the Applicant suggests that the administrative law judge not only deny the Protestants' motion but fashion a summary adjudication ruling stating that there is no disputed material fact that:

- 1) Regionalization is not a basis to deny the permit and
- 2) the Applicant does own the property the facility will be located on and land ownership is not a basis to deny the permit.

Respectfully submitted,



Stephen Selinger, Applicant and Owner

EXHIBIT 4

1. My name is Charles Gillespie. This is an unsworn declaration pursuant to section 132.001 of the Texas Civil Practice and Remedies Code. I have personal knowledge of the matters stated herein, and I declare under penalty of perjury that the statements in this declaration are true and correct.

1. Attachment 1 is an email from Jim Wehmeir of the City of Ennis that details the projected costs of the minimum improvements for Ennis to provide sanitary sewer service to the 530 acres that is the subject of this contested case. The required improvements contain 38,800 lineal feet of sewer lines, and the projected costs total \$6,799,464. The required improvement of 38,800 feet is conclusive evidence that the Ennis collection system does not currently have the capacity to accept the volume of sanitary wasted proposed in the subdivision.

2. Attachment 2 is a proposal from a contractor that have found to be a reputable and competent contractor over the last 10 years. His proposal is for \$601,000 for a 100,000 gallon plant and the cost would be approximately 2.4 million for a 405,000 gallon plant. This is less than 50% of the cost of the required City improvements. This contractor's proposal is consistent with the typical costs for construction of a wastewater treatment plant that I have witnessed in my 15 years as an engineer designing and supervising construction of such plants.

My name is Charles Gillespie, my birthdate is 9/17/1957, and my address is 150 N. Harbin, Stephenville, TX. I declare under penalty of perjury that the above statements are true and correct.

Signed,



Charles Gillespie

Dated December 18, 2022

12/15/22, 12:00 PM

Ex 1

Yahoo Mail - Re: outstanding issues

Re: outstanding issues

1

From: Jim Wehmeier (jimw@ennistx.gov)

To: steve\_selinger@yahoo.com

Date: Thursday, June 3, 2021 at 04:39 PM CDT

Hey Steve,

Water and wastewater line improvements are below. Cost of just the lines are never figured in our world as we have to look at the entirety of the system. This should answer your questions



**ECONOMIC  
DEVELOPMENT  
CORPORATION**

Jim Wehmeier  
Director of Economic Development  
City of Ennis, Tx.  
Ph: 972-878-4748 Ext. 2806  
C: 972-658-6504  
[www.ennistx.com](http://www.ennistx.com)

"The contents of this message contain information relating to economic development negotiations involving the City of Ennis, The Ennis Economic Development Corporation and/or a business prospect pursuant to Section 552.131 of Tex Govt Code and may not be disclosed or discussed. Please do not disclose or forward any information contained herein."



Ex1



**City of Ennis, TX**  
**Waxahachie Creek Ranch Development**  
**EOPCC for Necessary Wastewater Upgrades - April 19, 2021**

Recommended Minimum Wastewater Upgrades					
Item No.	Item Description	Quantity	Unit	Unit Price	Total Price
1	Mobilization, Insurance and Bonds	1	LS	5%	\$ 224,850.00
2	Traffic Control	1	LS	\$ 20,000.00	\$ 20,000.00
3	Construction Staking & Utilities Locates	1	LS	\$ 10,000.00	\$ 10,000.00
4	Erosion Control + SW3P	1	LS	\$ 15,000.00	\$ 15,000.00
5	New 16" Forcemain	26,200	LF	\$ 75.00	\$ 1,965,000.00
6	New 5' Dia. Concrete Manhole	17	EA	\$ 6,000.00	\$ 102,000.00
7	New Lift Station, Pumps, Electrical and Site Improvements	1	LS	\$ 600,000.00	\$ 600,000.00
8	New Generators for New Lift Station	1	LS	\$ 100,000.00	\$ 100,000.00
9	New 14" Forcemain	8,000	LF	\$ 60.00	\$ 480,000.00
10	Remove Existing 15" and Replace with 30" PVC Gravity Sewerline	2,100	LF	\$ 150.00	\$ 315,000.00
11	Remove Existing 21" and Replace with 30" PVC Gravity Sewerline	2,500	LF	\$ 150.00	\$ 375,000.00
12	Existing Lift Station Pump Upgrades	1	LS	\$ 150,000.00	\$ 150,000.00
13	Existing Lift Station Wet Well Upgrades	1	LS	\$ 150,000.00	\$ 150,000.00
14	New Generators for Existing Lift Station	1	LS	\$ 100,000.00	\$ 100,000.00
15	Air Release Valve	18	EA	\$ 5,000.00	\$ 90,000.00
16	Owner's Allowance for Materials Testing	1	LS	\$ 25,000.00	\$ 25,000.00
17	Construction Contingency/Owner's Allowance	1	LS	20%	\$ 944,370.00
18	Regulatory Permitting	1	LS	2%	\$ 113,324.40
19	Design Engineering & Surveying	1	LS	12%	\$ 679,946.40
20	Construction Phase Services	1	LS	6%	\$ 339,973.20
<b>Estimated Project Total:</b>					<b>\$6,799,464</b>

\*Proposed wastewater upgrades are based on the existing sewer model and are the minimum improvements necessary to adequately serve the proposed development's proposed peak flow

\*This service scenario assumes that the planned sanitary sewer upgrades for the Nesuda project will be completed prior to the Waxahachie Creek development

\*These upgrades do not include the WWTP capacity increase that will be necessary to handle full buildout of Waxahachie Creek

\*this estimate does not include property/easement acquisition which will be required (minimum 25')

38,800



Ex1 Att (2)

**SOUTHWEST FLUID PRODUCTS, INC.**  
**P. O. BOX 841**  
**WEATHERFORD, TX 76086**  
**PHONE: (817)594-0224**  
**FAX: (817)596 8826**

**PROPOSAL**

**Proposal # 21-144-S**

**December 15, 2021**

**To: Mr. Steve Selinger**

**Engineer: Charlie Gillespie, PE**

**Via email: steve\_selinger@yahoo.com**

**Project: 100,000 GPD Wastewater Treatment Plant**

We are please to quote the following equipment and services for the referenced project:

**Item #1 Wastewater Treatment Plant**

One (1) Wastewater treatment plant rated to treat 100,000 GPD of domestic wastewater containing 250 mg/l BOD<sub>5</sub>. Plant to be designed and built in accordance with engineer's plans and specification for effluent quality of 10/15/3 mg/l BOD<sub>5</sub>/TSS/NH<sub>3</sub>. Plant will ship in Four (4) major pieces, Two (2) Aeration/Sludge Holding tanks 41' long x 12' wide x 12' tall, One (1) 21' diameter clarifier and one 20' x 12' wide chlorine contact tank. Equipment includes all components delivered and assembled on site including blowers, chlorine equipment, and controls. Flow metering, and staff gage are included.

Generally plant to include the following items:

- One (1) Barscreen box inlet box designed for 100,000 GPD ADF.
- One (1) Sludge holding tank
- Two (2) Aeration tanks
- One (1) Clarifier tank
- Chlorine contact tank
- All tanks will include air header and diffusers, and airlift pumps for RAS, Scum and WAS functions

Ex 1, AH 2 (2)

- Diffusers in Aeration chamber and in Digester and Chlorine contact chamber to be coarse bubble diffusers as manufactured by Southwest Fluid Products.
- Blower designed to provide all air required for plant at 100,000 GPD (200 CFM)
- Blower controls and starters
- Blower header
- Stairway
- Walkway on aeration tanks and clarifier to extend to the entire tank
- All double handrail required for all walkways and stairways. grating to be galvanized
- Chlorine equipment (liquid), alum feed (liquid)
- Flow meter, Siemens 430 series ultrasonic meter
- All hardware required for installation

We will provide crew and equipment required to unload equipment, set and assemble all components of the plant and lift station.

Will provide startup service and train operators on all equipment for one day

**Notes:**

- All fabrications not hot dip galvanized to be finish painted using Enduron coal tar based polyurethane specifically designed for wastewater service
- We will provide drawings for approval, maintenance manuals and startup service

We estimate delivery after approval to be 24 to 28 weeks.

**Basic Plant Price: TOTAL PRICE, FOB jobsite \$ 601,065.00 plus any taxes which may apply.**

**Price above is lump sum. The following are for your use in filling out bid form only, no prices are stand alone:**

**Terms:**

***Prices are good for 30 days after bid date, contingent on our receiving a letter of intent within one week of bid date contingent on contract award.***

***Payment to be as follows:***

---

Ex 1 Att 2  
(2)

- 10% when sellers drawings are approved for production of equipment
- 80% Billed monthly during fabrication at our facility and onsite installation.
- 10% at final acceptance and startup

*The right to make and invoice for partial shipment is specifically reserved. We anticipate invoicing for work performed on a monthly draw for material on hand and work performed.*

*Proposal includes all equipment startup by factory personnel and training of operators in operation and servicing all equipment*

*"As built" drawings, and operations/service manuals are included.*

Southwest West Fluid Products, Inc.



Marshall W Ray  
President

Accepted by: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_



## EXHIBIT 2

1. My name is Stephen Selinger. This is an unsworn declaration pursuant to section 132.001 of the Texas Civil Practice and Remedies Code. I have personal knowledge of the matters stated herein, and I declare under penalty of perjury that the statements in this declaration are true and correct.
2. This exhibit 2 contains an email that Jim Wehmeier, Director of Economic Development of Ennis, sent me on June 3, 2021. Attached to it was the cost for Ennis to provide wastewater service to the subject site.
3. This exhibit 2 also contains an email that Southwest Fluid Products sent me regarding the cost of my own wastewater system for the subject site.
4. Exhibit 3 is a print out of the TCEQ website from December 17, 2022 stating that TCEQ has not denied any wastewater water permit actions based solely upon regionalization.
4. Exhibit 4 is a deed showing that Poetry Road LLC deeded the property to Stephen Selinger on December 7, 2022.
5. Exhibit 5 is a print out from the Westlaw.com website stating that equitable title to property is established from the date a purchase and sale agreement is executed. The Second page of exhibit 5 is a print out from brightmls.com stating that an equitable owner is a buyer who has signed a fully executed purchase and sale agreement from the time such an agreement has been signed. When I signed the TCEQ application on September 21, 2021, I had entered into a fully executed purchase and sale agreement and was the equitable owner of the property.

My name is Stephen Selinger, my birthdate is 04-15-1953, and my address is 620 Truelove Trail, Southlake, TX 76092. I declare under penalty of perjury that the above statements are true and correct.

Signed,



Stephen Selinger

Dated 12/18/22

12/15/22, 12:00 PM

~~Ex 2~~ Ex 2

Yahoo Mail - Re: outstanding issues

Re: outstanding issues

(1)

From: Jim Wehmeier (jimw@ennistx.gov)

To: steve\_selinger@yahoo.com

Date: Thursday, June 3, 2021 at 04:39 PM CDT

Hey Steve,

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Ex 2

-BFI



City of Ennis, TX  
Waxahachie Creek Ranch Development  
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Exd AH (2)

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**P. O. BOX 841**  
**WEATHERFORD, TX 76086**  
**PHONE: (817)594-0224**  
**FAX: (817)596 8826**

**PROPOSAL**

**Proposal # 21-144-S**

**December 15, 2021**

**To: Mr. Steve Selinger**

**Engineer: Charlie Gillespie, PE**

**Via email: steve\_selinger@yahoo.com**

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ExA, AH 2 (2)

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- Blower header
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Ex 2 Att 2  
(2)

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*Proposal includes all equipment startup by factory personnel and training of operators in operation and servicing all equipment*

*"As built" drawings, and operations/service manuals are included.*

Southwest West Fluid Products, Inc.



Marshall W Ray  
President

Accepted by: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_



**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

(<https://www.tceq.texas.gov>)

Home (<https://www.tceq.texas.gov>) / Permits, Registrations, and Reporting

(<https://www.tceq.texas.gov/permitting>) / Wastewater Treatment

(<https://www.tceq.texas.gov/permitting/wastewater>) / TCEQ Regionalization Policy for Wastewater Treatment

# TCEQ Regionalization Policy for Wastewater Treatment

**Information for applicants and the public about the requirements associated with regionalization and TCEQ's role in reviewing domestic wastewater permit applications.**

**On this page:**

- **What is wastewater regionalization?**
- **When does TCEQ assess for wastewater regionalization?**
- **How has TCEQ decided on wastewater regionalization in the past?**
- **What do I need to provide as an applicant, for TCEQ to assess the need and availability of regionalization during the wastewater permitting process?**
- **How can the public participate in the wastewater permitting process?**

## What is wastewater regionalization?

Regionalization is the administrative or physical combination of two or more community wastewater systems for improved planning operation or management.

Texas Water Code (TWC) Section 26.081 provides Texas' regionalization policy for wastewater treatment. It states that TCEQ is to implement a policy to "encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state".

In furtherance of that policy TWC Section 26.0282 authorizes TCEQ, when considering issuing a permit to discharge waste, to deny or alter the terms and conditions of a proposed permit based on need and the availability of existing or proposed area-wide or regional waste collection, treatment, and disposal systems.

▲ **Back to top**



## When does TCEQ assess for wastewater regionalization?

Ex 3

TCEQ will assess for the need and availability of regionalization for wastewater during the permitting process. The presence of a wastewater treatment facility or wastewater collection system within three miles of a proposed new wastewater treatment facility or the expansion of an existing facility is not an automatic basis to deny an application or to compel an applicant to connect to an existing facility.

TCEQ may approve new, renewal, and major amendment applications for discharges of wastewater in any of the following situations where:

- There is no wastewater treatment facility or collection system within three miles of the proposed facility.
- The applicant requested service from wastewater treatment facilities within the 3 miles, and the request was denied.
- The applicant can successfully demonstrate that an exception to regionalization should be granted based on costs, affordable rates, and/or other relevant factors.
- The applicant has obtained a Certificate of Convenience and Necessity (CCN) for the service area of the proposed new facility or the proposed expansion of the existing facility.

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## How has TCEQ decided on wastewater regionalization in the past?

TCEQ has not denied any wastewater permit actions based solely on regionalization, and the agency supports new applicants and existing facilities productively working together to provide quality and cost-effective service. The following concerns related to regionalization were raised during previous wastewater permit actions and subsequent legal proceedings:



- lack of timely and cost-efficient wastewater services within the surrounding area
- lack of detailed cost analysis and comparison
- lack of thorough communication with existing facilities within a three-mile radius
- discharges within the Cibolo Creek Watershed per Title 30 , Texas Administrative Code (30 TAC), Section 351.65

TCEQ has previously included agreed language between the applicant and protestants in the "Other Requirements" section of the proposed permit that contains requirements about future coordination if the existing wastewater provider is able to provide service to proposed area.

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## What do I need to provide as an applicant, for TCEQ to assess the need and availability of regionalization during the wastewater permitting process?

TCEQ requires that you include justification of permit need in all wastewater permit applications for new facilities and all applications to amend an existing permit. Section 1.1 of the Domestic Technical Report for wastewater permit applications also requires the following information:

1. Determine whether or not there are any permitted domestic wastewater treatment facilities or collection systems within a three-mile radius of the proposed facility.
  - Tools to use:
    - **Wastewater Outfall Map Viewer**   
(<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=d47b9419f42c49dea592203aeda99da1>)
    - **PUC CCN Map Viewer**   
(<https://www.puc.texas.gov/industry/water/utilities/map.aspx>)
2. Contact any existing permitted domestic wastewater treatment facilities within a three-mile radius to inquire if they currently have the capacity to accept or are willing to expand to accept the volume of wastewater proposed.
  - If an existing facility does have the capacity to accept the proposed wastewater, submit an analysis of expenditures required to connect to the existing facility or collection system versus the cost of constructing and operating the proposed new facility or expansion.
3. Provide copies of all correspondence with the owners and/or operators of any existing permitted domestic wastewater treatment facilities and collection systems within a three-mile radius of the proposed facility.

▲ **Back to top**

## How can the public participate in the wastewater permitting process?

- **Environmental Permitting: Participating in the Process**  
([/agency/decisions/participation/permitting-participation](#))
- **Permits for Municipal Wastewater Treatment Plants: Learning More**  
([/agency/decisions/participation/permitting-participation/municipal-wastewater](#))

▲ **Back to top**



Ex. 84

50 7 ①

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

## TEXAS GENERAL WARRANTY DEED

Date:

Grantor: **POETRY ROAD LLC, a Texas limited liability company**

Grantor's Mailing Address (including county):

**620 Truelove Trail, Southlake, Tarrant County, TX 76092**

Grantee: **Stephen Selinger, an individual**

Grantee's Mailing Address (including county):

**620 TRUELOVE TRAIL, SOUTHLAKE, TARRANT COUNTY, TX 76092**

Consideration: **Cash and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.**

Property (including any improvements):

ALL that certain tract or parcel of land lying and being situated in the Cary White Survey, Abstract No. 1109, the Sutherland Mayfield Survey, Abstract No. 670, Ellis County, Texas, and being a portion of that certain tract of land known as the "Seay-Howard Farm," and being described as all of the FIRST SUB-TRACT, First Tract, Second Tract, and Third Tract; the SECOND SUB-TRACT, First Tract; the THIRD SUB-TRACT; the FOURTH SUB-TRACT; the FIFTH SUB-TRACT; the SIXTH SUB-TRACT; in the SEVENTH SUB-TRACT as conveyed by Lynn B. Griffith, et al. to Ellen Kirven Pearson Blount, et al. on August 25, 1975 WARRANTY DEED filed of record in Volume 592, Page 202, Deed Records of Ellis County, Texas, and being a portion of that certain tract of land conveyed to Waxahachie Creek Ranch, LLC, according to the Special Warranty Deed filed of record as County Clerk Instrument #1733497, Official Public Records of Ellis County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod with a yellow plastic cap marked "4466" (Texas Coordinate System of 1983, Texas North Central Zone, N: 6,795,394.32 feet, E: 2,506,438.69 feet, based upon the North American Datum of 1983 (2011)) found in the north line of F.M. Highway No. 984, said point being the most southerly southeast corner of that certain tract of land conveyed to Charles W. Cope according to the deed filed of record in Volume 868, Page 666, Deed Records of Ellis County, Texas, said point being the most southerly southwest corner of said one Waxahachie Creek Ranch tract, and being the southwest corner of said FIFTH SUB-TRACT, and being the most southerly southwest corner of this tract;



THENCE N 30° 48' 17" W, along or near a fence, and along the most southerly east line of said Cope tract, and along the west line of said FIFTH SUB-TRACT, a distance of 837.70 feet to a ½ inch iron rod found, an inside ell corner of said Cope tract, and being the northwest corner of said FIFTH SUB-TRACT, for the most southerly northwest corner of this tract;

THENCE N 59° 06' 52" E, along the most northerly south line of said Cope tract, and along the north line of said FIFTH SUB-TRACT, and along or near a fence, a distance of 879.72 feet to a ½ inch iron rod with a yellow plastic cap marked "4466" found, the most northerly southeast corner of said Cope tract, said point also being the southwest corner of said THIRD SUB-TRACT, for an inside ell corner of this tract;

THENCE N 29° 53' 57" W, along or near a fence, and along the most northerly east line of said Cope tract, and along the west line of said THIRD SUB-TRACT, a distance of 1241.36 feet to a ½ inch iron rod found, the most southerly southeast corner of said SIXTH SUB-TRACT, and being the northeast corner of said Cope tract, for an inside ell corner of this tract;

THENCE S 58° 16' 27" W, along or near a fence, and along the north line of said Cope tract, and along the most southerly southeast line of said SIXTH SUB-TRACT, a distance of 908.72 feet to a ½ inch iron rod with a yellow plastic cap marked "WSLC", said point being the southeast corner of that certain tract of land conveyed to the Simon D. Cannon Testamentary Trust according to the deed filed of record in Volume 2533, Page 1352, Official Public Records of Ellis County, Texas, also being the southwest corner of said SIXTH SUB-TRACT, for the most northerly southwest corner of this tract;

THENCE N 31° 00' 29" W, along the east line of said Cannon tract and the west line of said SIXTH SUB-TRACT, and along or near a fence, a distance of 2602.51 feet to a ½ inch iron rod with a yellow plastic cap marked "GSW Surveyors" set in Jenkins Road, said point being a northeast corner of said Cannon tract, and being the northwest corner of said SIXTH SUB-TRACT, for the northwest corner of this tract;

THENCE N 58° 36' 46" E, with the general alignment of said Jenkins Road, and along the north line of said SIXTH SUB-TRACT, and a distance of 1743.09 feet pass a ½ inch iron rod with a yellow plastic cap marked "GSW Surveyors" set for the southwest corner of the FIFTEENTH SUB-TRACT of the said Blount tract, in all a distance of 2154.38 feet to a 4 inch steel fence post in the approximate south line of said road, said point being the northeast corner of said SIXTH SUB-TRACT, and being the northwest corner of that certain tract of land conveyed to Gregory T. Burdette according to the deed filed of record in Volume 2025, Page 1168, Official Public Records of Ellis County, Texas, for the most westerly northeast corner of this tract;

THENCE S 34° 24' 54" E, along or near the fence, and along the most northerly east line of said SIXTH SUB-TRACT, and along the west line of said Burdette tract, a distance of 1749.60 feet to a 60d nail found in the base of a leaning 10 inch crenate fence corner post found in the north line of said THIRD SUB-TRACT, said point being the southwest corner of said Burdette tract, and being the most northerly southeast corner of said SIXTH SUB-TRACT, for inside ell corner of this tract;

THENCE N 56° 29' 06" E, along or near a fence, and along the most easterly north line of said Waxahachie Creek Ranch tract, and along the south line of said Burdette tract, and along the north line of said THIRD SUB-TRACT, a distance of 796.40 feet to a ½ inch iron rod with a yellow plastic cap marked "GSW Surveyors" set, said point being an angle point in the south line of said Burdette tract, for angle point in the most easterly north line of this tract;



THENCE N 10° 45' 06" E, along the south line of said Burdette tract, and along the most easterly north line of said Waxahachie Creek Ranch tract, a distance of 209.50 feet to ½ inch iron rod with a yellow plastic cap marked "GSW Surveyors" set for an angle point in the common line of said tracts;

THENCE N 43° 19' 06" E, along the south line of said Burdette tract, and along the most easterly north line of said Waxahachie Creek Ranch tract, a distance of 988.00 feet to ½ inch iron rod with a yellow plastic cap marked "GSW Surveyors" set for an angle point in the common line of said tracts;

THENCE , along the south line of said Burdette tract, and along the most easterly north line of said Waxahachie Creek Ranch tract, and generally with the meanders of a branch as follows: N 29° 25' 54" W, a distance of 272.00 feet; N 45° 20' 06" E, a distance of 330.00 feet; N 87° 55' 06" E, a distance of 85.00 feet; N 12° 59' 54" W, a distance of 110.00 feet; N 57° 15' 06" E, a distance of 80.00 feet; N 28° 09' 54" W, a distance of 90.00 feet; N 39° 40' 41" E, a distance of 66.70 feet to the confluence of the waters of said branch with the waters of Waxahachie Creek, said point being the most easterly corner of said Burdette tract, and being in the southwest line of that certain tract of land conveyed to Jimmy L. Hardin according to the deed filed of record in Volume 760, Page 187, Official Public Records of Ellis County, Texas, said point being in angle point in the most easterly north line of said Waxahachie Creek tract, for an angle point in the most easterly north line of this tract;

THENCE along the southwesterly line of said Hardin tract, and along the most easterly north line of said Waxahachie Creek tract, and generally with the meanders of Waxahachie Creek as follows: N 84° 50' 23" E, a distance of 50.09 feet; S 59° 40' 14" E, a distance of 55.88 feet; S 01° 27' 23" E, a distance of 162.81 feet; S 66° 29' 07" E, a distance of 188.60 feet; N 72° 02' 27" E, a distance of 91.52 feet; N 40° 40' 25" E, a distance of 131.77 feet; N 06° 13' 22" W, a distance of 184.51 feet; N 25° 12' 51" E, a distance of 44.19 feet; N 80° 32' 35" E, a distance of 42.94 feet; S 56° 30' 44" E, a distance of 100.15 feet; S 73° 18' 37" E, a distance of 49.13 feet; N 54° 52' 41" E, a distance of 104.67 feet; S 62° 42' 51" E, a distance of 110.73 feet; N 76° 40' 59" E, a distance of 61.98 feet; N 12° 12' 27" E, a distance of 180.15 feet; N 57° 06' 37" E, a distance of 64.27 feet; S 78° 24' 52" E, a distance of 63.19 feet; S 52° 49' 54" E, a distance of 115.53 feet; N 32° 38' 05" E, a distance of 94.18 feet; N 33° 42' 21" W, a distance of 165.89 feet; N 45° 01' 02" E, a distance of 62.83 feet; S 62° 45' 31" E, a distance of 117.82 feet; S 33° 16' 50" E, a distance of 237.18 feet; S 79° 34' 07" E, a distance of 122.66 feet; N 77° 19' 37" E, a distance of 130.15 feet; S 60° 28' 01" E, a distance of 132.68 feet to the intersection of the meanders of said Creek and the west line of the Burlington Northern Santa Fe Railway right-of-way, said point being the most easterly corner of said Hardin tract, and being the most southerly northeast corner of said Waxahachie Creek Ranch tract, for the northeast corner of this tract;

THENCE S 27° 09' 03" E, along the west line of said right-of-way, and along the most southerly east line of said Waxahachie Creek Ranch tract, a distance of 1090.38 feet to a ½ inch iron rod with a yellow plastic cap marked "GSW Surveyors" set for an inside ell corner of said right-of-way, said point being in angle point in the most southerly east line of said ranch tract, for an angle point in the most southerly east line of this tract;

THENCE S 58° 04' 55" W, along the line of said right-of-way, and along the most southerly east line of said ranch tract, a distance of 36.12 feet to a ½ inch iron rod with a yellow plastic cap marked "GSW Surveyors" set, said point being an inside ell corner of said ranch tract, and being an outside ell corner of said right-of-way, for an inside ell corner of this tract;

THENCE S 31° 55' 05" E, along the west line of said right-of-way and along the most southerly east line of said ranch tract, a distance of 433.11 feet to a ½ inch iron rod with a yellow plastic cap marked "GSW Surveyors", said point being in angle point in the most southerly east line of said ranch tract and in the west line of said right-of-way, for an angle point in the most southerly east line of this tract;



THENCE S 27° 09' 03" E., along the most southerly east line of said Waxahachie Creek Ranch tract and along the west line of said right-of-way, a distance of 1693.88 feet to a ½ inch iron rod with a yellow plastic cap marked "CSW Surveyors" set in the north line of Getzendaner Road, and being the southeast corner of said SEVENTH SUB-TRACT, and being the southeast corner of said Waxahachie Creek Ranch tract, for the southeast corner of this tract;

THENCE S 58° 17' 09" W. along the approximate north line of said road, along the south line of said SEVENTH SUB-TRACT, and said FIRST SUB-TRACT, Second Tract, and along the south line of said Waxahachie Creek Ranch tract, a distance of 3084.98 feet to a ½ inch capped iron rod found an inside ell corner of said ranch tract, and outside ell corner of the irregular right-of-way said road, for an inside ell corner in the south line of this tract;

THENCE S 29° 57' 55" W, along the most southerly southeast line of said FIFTH SUB-TRACT, and along the meandering north line of Getzendaner Road, a distance of 193.81 feet to a ½ inch iron rod with a yellow plastic cap marked "4466" found for a corner of this tract;

THENCE along the meanders of the south line of said FIFTH SUB-TRACT, and along the meandering north line of said road as follows:

S 20° 19' 53" W, a distance of 373.02 feet to a ½ inch iron rod with a yellow plastic cap marked "4466" found for a corner of this tract, and being at the intersection of the north right-of-way of said Getzendaner Road and the north right-of-way of F. M. Highway No. 984, for corner of this tract;

S 64° 43' 57" W, a distance of 351.53 feet to a ½ inch iron rod with a yellow plastic cap marked "4466" found for a corner of this tract, said point being the beginning of a non-tangent curve to the left;

Along said curve to the left radius of which is 2146.51 feet, the central angle of which is 04° 34' 07", chord bearing of which bears N 80° 34' 17" W, a chord distance of 171.11 feet, for a distance of 171.16 feet along the curve to a ½ inch iron rod found for a corner of this tract

N 08° 04' 77" E, a distance of 11.95 feet to a ½ inch iron rod found for inside ell corner of this tract;

N 73° 24' 22" W, along or near a fence, a distance of 507.83 feet to a ½ inch iron rod found for a corner of this tract;

S 60° 17' 49" W, a distance of 479.77 feet to a ½ inch iron rod found for a corner of this tract, said point being the beginning of a non-tangent curve to the left;

Along said curve to the left, the radius of which is 2146.51 feet, the central angle of which is 12° 36' 44", the long chord of which bears S 66° 27' 40" W, a chord distance of 471.55 feet, for a distance along the curve of 472.50 feet to a wooden highway monument found for a corner of this tract;

S 60° 14' 26" W, a distance of 341.59 feet to a wooden highway monument found for a corner of this tract, said point being the beginning of a non-tangent curve to the left;

Along said curve to the left, the radius of which is 1004.93 feet, the central angle of which is 12° 15' 31", the long chord of which bears S 54° 12' 49" W, a chord distance of 214.60 feet, for a distance along the curve of 250.01 feet to a wooden highway monument found for a corner of this tract;

S 48° 08' 10" W, a distance of 309.33 feet to a wooden highway monument found for a corner of this tract, said point being the beginning of a non-tangent curve to the right;



Along said curve to the right, the radius of which is 904.93 feet, the central angle of which is  $02^{\circ} 42' 15''$ , the long chord of which bears S  $48^{\circ} 26' 12''$  W, a chord distance of 42.70 feet, for a distance along the curve of 42.71 feet to the PLACE OF BEGINNING, and containing 530.64 acres of land, more or less.

Reservations from Conveyance: **NONE**

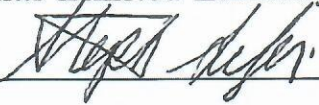
Exceptions to Conveyance and Warranty:

**Liens described as part of the Consideration and any other liens described in this deed as being either assumed or subject to which title is taken, validly existing easements, rights-of-way, end prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interest, and water interests outstanding in persons other than Grantor, and other instruments, other than conveyances of the surface fee estate, that affect the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; zoning laws, regulations and ordinances of municipal and other governmental authorities, if any; and taxes for 2022, which Grantee assumes and agrees to pay, and subsequent assessment for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes.**

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs, and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

**POETRY ROAD LLC,  
a Texas Limited Liability Company**

By: 

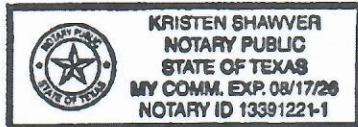
Stephen Selinger, managing member of  
Poetry Road LLC


## Acknowledgment

State of Texas  
County of Tarrant

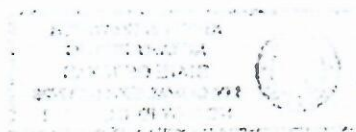
This instrument was acknowledged before me on the 7 day of December, 2022  
by Stephen Selinger, managing member of Poetry Road LLC, a Texas Limited  
Liability Company, by and on behalf of said company.

(SEAL)



  
\_\_\_\_\_  
Notary Public, State of Texas  
Notary's commission expires: 8-17-26

FILED FOR RECORD - ELLIS COUNTY, TX  
INST NO. 2245366  
on Dec 07, 2022 at 11:34:00 AM



STATE OF TEXAS                      COUNTY OF ELLIS  
I hereby certify this instrument was filed on the date  
and time stamped hereon and was duly recorded in  
the records of Ellis County, Texas as stamped hereon.



*Hugo Valdez*

COUNTY CLERK, ELLIS COUNTY, TEXAS



REC NO: 938536

Ellis County, Texas  
Krystal Valdez, County Clerk  
P O Box 250  
Waxahachie, Texas 75165  
(972) 825-5070



DATE : 12/07/2022

TIME : 11:34am

YOUR CASHIER WAS: ACONNOR

REGISTER NO : 45

RECVD FROM: STEPHEN SELINGER

ITEM DESCRIPTION	GFE NO.	CLERK/CAUSE NO.	QTY	FEES PAID
OFFICIAL PUBLIC RECORDS		2245366	7	\$ 50.00
PHOTO COPIES			7	\$ 7.00
<b>TOTAL FEES PAID</b>				<b>\$ 57.00</b>

----- AMOUNT TENDERED -----

CASH RECEIVED	\$ 0.00
CHECKS RECEIVED	\$ 57.00
TIME SERVED	\$ 0.00
WAIVED FEES	\$ 0.00
DEPOSITORY DEBIT	\$ 0.00
DIRECT DEPOSIT	\$ 0.00

**TOTAL RECEIVED \$ 57.00**

----- TRANSACTION SUMMARY -----

TOTAL RECEIVED	\$ 57.00
TOTAL FEES PAID	\$ 57.00

**CHANGE DUE BACK \$ 0.00**

---- CHECKS, MONEY ORDERS or DIRECT DEPOSITS ----

1 Checks, Money Orders, or Direct Deposits Received

CK# 1788 \$ 57.00

REC NO. 938536 CLOSED

Thank you

*Krystal Valdez*  
County Clerk

○ Ex 5

## Glossary

### Equitable Title

A beneficial interest in real property that gives the title holder the right to acquire legal title to the property. Equitable title holders cannot transfer legal title to real property, but they derive benefits from the property's appreciation in value.

In the context of an acquisition of real property, the purchaser holds equitable title to the property from the date the purchase and sale agreement is executed, although legal title is not transferred until the deed to the property is transferred from the seller to the purchaser.

Equitable title is also seen in states where lenders secure loans on real property with deeds of trust instead of mortgages. Although a borrower retains equitable title to the property throughout the pendency of the loan, it relinquishes legal title to the property to a third-party trustee until the loan is fully repaid to the lender.

*Ex. 5*

n/) Training (/s/training) Search Help Topics (<https://applications.brightmls.com/help/content/>)

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## EQUITABLE OWNERSHIP

*What is equitable ownership? Equitable Ownership listings are not eligible for MLS inclusion since an equitable owner does not have legal title to a property, but does have an interest in the property that can be sold.*

🕒 Aug 23, 2022 • KB Article

### Article Number

000001237

### Content RTF

An equitable owner is a buyer who has signed an agreement of sale to purchase a property, starting from the time the agreement of sale is fully executed by both the buyer and seller until a settlement is completed. Equitable Ownership listings are not eligible for MLS inclusion since an equitable owner does not have legal title to a property, but does have an interest in the property that can be sold.



### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 71138712  
Status as of 12/19/2022 4:07 PM CST

Associated Case Party: OPIC

Name	BarNumber	Email	TimestampSubmitted	Status
Garrett Arthur		garrett.arthur@tceq.texas.gov	12/19/2022 2:17:26 PM	SENT
Eli Martinez		eli.martinez@tceq.texas.gov	12/19/2022 2:17:26 PM	SENT

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Natalie Scott		nscott@coatsrose.com	12/19/2022 2:17:26 PM	SENT
Joshua Katz		jkatz@bickerstaff.com	12/19/2022 2:17:26 PM	SENT
Natalie Bivins Scott	24027970	nscott@coatsrose.com	12/19/2022 2:17:26 PM	SENT
Garrett Arthur		garrett.arthur@tceq.texas.gov	12/19/2022 2:17:26 PM	SENT
Rae Fregeolle-Burk		rfburk@bickerstaff.com	12/19/2022 2:17:26 PM	SENT
Stefanie Albright		salbright@bickerstaff.com	12/19/2022 2:17:26 PM	SENT
Aubrey Pawelka		aubrey.pawelka@tceq.texas.gov	12/19/2022 2:17:26 PM	SENT
Stephen Selinger		Steve_Selinger@yahoo.com	12/19/2022 2:17:26 PM	SENT
Emily Rogers		erogers@bickerstaff.com	12/19/2022 2:17:26 PM	SENT
OLS Legal Support		TCEQsoah@tceq.texas.gov	12/19/2022 2:17:26 PM	SENT
Vic McWherter		vic.mcwherter@tceq.texas.gov	12/19/2022 2:17:26 PM	ERROR
Steve Selinger		steve_selinger@yahoo.com	12/19/2022 2:17:26 PM	SENT

Associated Case Party: Executive Director

Name	BarNumber	Email	TimestampSubmitted	Status
Aubrey Pawelka		aubrey.pawelka@tceq.texas.gov	12/19/2022 2:17:26 PM	SENT



*Proposal for Decision - Exhibit 2*

SOAH DOCKET NO. 582-22-1885  
TCEQ DOCKET NO. 2021-1442-MWD

FILED  
582-22-1885  
1/17/2023 11:14 AM  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Carol Hale, CLERK

Applicant has arranged for the following court reporter service:

ACCEPTED  
582-22-1885  
1/17/2023 1:47:51 pm  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Carol Hale, CLERK

STRYKER REPORTING  
1450 Hughes Road, suite 106  
Grapevine, TX 76051  
817-494-0700 FAX 817-494-0778 Mobile 817-913-7037  
[renee@strykerreporting.com](mailto:renee@strykerreporting.com)

Applicant's witnesses will be Charles Gillespie and Stephen Selinger

Applicants exhibits will be:

exhibit 1--prefiled testimony of Charles Gillespie (18 pages)

exhibit 2—declaration of Charles Gillespie (1 page)

exhibit 3—email of Jim Wehmeirer to Steve Selinger (with attachment) dated June 3, 2021 (2 pages)

exhibit 4—proposal of Southwest Fluid Products dated December 15, 2021 (3 pages)

exhibit 5—printout of TCEQ website stating no wastewater treatment plant has ever been solely denied on the basis of regionalization (3 pages)

exhibit 6—Warranty Deed from Poetry Road LLC to Stephen Selinger of subject property dated December 7, 2022 (9 pages)

exhibit 7—glossary regarding "Equitable title" from Westlaw.com (1 page)

exhibit 8—definition of "equitable ownership" from brightmls.com (1 page)

# Stryker Reporting

## Invoice

### Prompt and Precise Litigation Support

1450 Hughes Road

Suite 106

Grapevine TX 76051

Phone: (817) 494-0700

Fax: (817) 494-0778

#### Invoice Date

Tuesday, February 7, 2023

#### Invoice #

8456A

Steve Selinger  
Steve Selinger  
620 True Love Trail  
Grapevine, TX 76092

Phone:

Fax:

**Witness:** Oral Administrative Hearing

**Case:** For the New Texas Pollutant Discharge Elimination System

**Venue:** State Office of Administrative Hearings

**Case #:** 582-22-1885

**Date:** 1/25/2023

**Start Time:** 9:02 AM

**End Time:** 11:43 AM

**Reporter:** Shawna Cox

**Claim #:**

**File #:**

23048A

Description	Each	Quan	Total
Remote Attendance, Half-Day	\$75.00	1	\$75.00
Original, Hearing (Applicant)	\$10.00	100	\$1,000.00
Electronic Format PDF (Applicant)	\$35.00	1	\$35.00
Exhibits PDF (Applicant)	\$0.25	559	\$139.75
Copy, Hearing (TCEQ)	\$5.00	100	\$500.00
Electronic Format PDF (TCEQ)	\$35.00	1	\$35.00
Exhibits PDF or Copy (TCEQ)	\$0.25	559	\$139.75
Administration Fee	\$65.00	1	\$65.00
<b>Sub Total</b>			\$1,989.50
<b>Payments</b>			\$0.00
<b>Balance Due</b>			\$1,989.50

Fed. I.D. # 81-3014194

**Due upon receipt. Please reference the invoice number on your check.**

*Proposal for Decision - Exhibit 2*

Invoice 8456A - Oral Administrative Hearing

From: Renee Barrett (renee@strykerreporting.com)

To: steve\_selinger@yahoo.com

Date: Tuesday, February 7, 2023 at 12:30 PM CST

A copy of your invoice is attached.

Per the Order, you have been invoiced for the original and the TCEQ's copy.

The total amount has been billed to the card provided on the Credit Card Pre-Authorization.

Thank you.

-----  
INVOICE INFORMATION:  
-----

INVOICE #: 8456A  
BILLED: 2/7/2023  
TOTAL: 1989.5  
AMOUNT DUE: 1989.5

-----  
JOB INFORMATION:  
-----

JOB #: 23048A  
DATE: 1/25/2023 9:02:00 AM  
WITNESS: Oral Administrative Hearing  
CAPTION: For the New Texas Pollutant Discharge Elimination System  
CASE #: 582-22-1885  
VENUE: State Office of Administrative Hearings

STRYKER REPORTING SERVICES  
1450 Hughes Road, Suite 106  
Grapevine, Texas 76051  
(817) 494-0700

<https://www.strykerreporting.com/>



8456A.pdf  
8.9kB



SOAH DOCKET NO. 582-22-1885  
TCEQ DOCKET NO. 2021-1216-MWD

APPLICATION BY STEPHEN SELINGER  
FOR NEW TEXAS POLLUTANT DISCHARGE  
ELIMINATION SYSTEM PERMIT WQ1593201

## **APPLICANT STEPHEN SELINGER'S BRIEF AND EXCEPTIONS RESPONDING TO PROPOSAL FOR DECISION**

### **I. INTRODUCTION**

The Applicant does not object to the sections of the Proposal for Decision regarding the issues of regionalization, water quality, or licensing. The Applicant does object to the Proposal for Decision's treatment of the land ownership issue and will confine this brief to that issue.

### **II. FINDING OF FACT 59 (THAT SELINGER IS NOT THE OWNER OF THE PROPOSED FACILITY) IS DEMONSTRABLY FALSE AND SHOULD BE CHANGED**

Despite the fact that **ALL** of the evidence shows that Selinger is the record owner of the property as of late December 2022, the Proposal finds that Selinger is not the owner. The Proposal ignores the following:

1) Protestants' own witness testified that Selinger is the owner of the property. The Proposal **simply ignores** this inconvenient fact. As pointed out in Selinger's Closing Argument (page 3), Protestant's witness Tim Osting stated that as of the end of December 2022, Selinger was the land owner (page 28 line 24 to page 29, line 6 of attached transcript.)

Apparently, the ALJ was not paying attention at the hearing, did not read the transcript, and did not read Selinger's Closing Argument. For the Proposal (page 38) states:

"At the hearing, Protestants' witness Mr. Osting discussed the land ownership issue as did the ED's witness Mr. Rahim. Selinger had an opportunity to cross-examine both witnesses on that issue during the hearing. Because Selinger had multiple opportunities to present evidence and cross-examine witnesses to develop his case supporting issuance of the Draft Permit, he was not denied the opportunity to respond to Protestants' case."



As quoted above, Selinger did in fact cross-examine Osting, who did in fact admit that Selinger owned the property. Yet this crucial fact is ignored by the ALJ who implies that Selinger passed on any cross examination of Osting. The Proposal for Decision should be changed to state that during Selinger's cross examination of Osting, Osting admitted that Selinger in fact owned the property as of the end of December 2022.

And contrary to the ALJ's statement that Selinger had "multiple opportunities to present evidence" (page 38), Selinger had **ZERO** opportunities to present evidence as the ALJ repeatedly declined to let him testify through out the Hearing. There is also **ZERO** evidence supporting the Proposal's bald assertion that Selinger had "multiple opportunities to present evidence" and the Proposal does not even try to cite any evidence for this assertion. In fact, all of the evidence, as discussed below, shows that Selinger had no opportunity to present evidence by testifying himself.

2) The Proposal mistakenly claims that Selinger did not prefile exhibits relating to land ownership. "However, Selinger was given the opportunity to prefile exhibits concerning the issue of land ownership by January 10, 2023, and he failed to do so. (fn 104)" (page 37 of Proposal.)

Contrary to this false statement, Selinger **twice** filed exhibits concerning land ownership prior to January 10. On December 12, 2022 he filed an affidavit stating he now owned the property as exhibit A and filed exhibit B as the deed showing he owned the property. On December 19, in his opposition to Protestants' motion for summary disposition, Selinger filed exhibit 2 as a declaration stating he owned the property, and filed exhibit 4 as the deed showing he owned the property.

The exhibits filed on December 19 were previously attached to Selinger's closing argument. To make it easy for the ALJ, and to see that they might actually be read this time, they are again attached to this filing as Exhibit 1.

The ALJ should take note of the definition of "pre" in the Merriam-Webster dictionary:

Pre: "earlier than, prior to, before"

There is no doubt that Selinger filed the Exhibit of the Deed as the ALJ admits it was filed as an exhibit in the Opposition to the Motion for Summary Judgment in footnote 102. There is no doubt that it was filed on December 19, 2022 as the filing stamp shows this. There is no doubt that December 19, 2022 comes **before, ie, pre** January 10, 2023,



the deadline for prefiling. Thus there is no doubt that Selinger **prefiled** the Deed before the January 10 deadline. Yet the ALJ in her Proposal continues to endorse the utter falsehood that Selinger never prefiled the Deed in a timely manner.

In footnote 102, the ALJ states;

“For support, he [Selinger] cites to his own unsworn declaration, which he attached as an exhibit to his response to Protestants’ motion for summary judgment but did not prefile, include on an exhibit list, or offer into evidence during the hearing on the merits. Accordingly, Selinger’s unsworn declaration is not part of the evidentiary record in this case and will not be further discussed.”

(As an aside, it should be noted that Selinger’s unsworn declaration is signed under penalty of perjury and per Texas Civil Practice and Remedies Code 132.001, it may be used in lieu of a written sworn declaration.)

In admitting the undeniable fact that Selinger responded to Protestants’ motion for summary judgment, the ALJ must admit that Selinger filed the Deed, as the Deed was attached to the Applicant’s response, and emphasized in the response. And as the Deed was filed on December 19, 2022, the ALJ must admit that the Deed was **prefiled** before the deadline of January 23, 2023.

While it is technically true Selinger did not file the unsworn declaration on an Exhibit list, it is false that Selinger did not include the Deed on an exhibit list, as the footnote 102 suggests. Exhibit 2 to this brief is the filing list of witnesses and Exhibits Selinger filed on January 17, 2022—which is 1 day before the deadline of January 18. Exhibit 6 on that list is the Warranty Deed from Poetry Road LLC to Stephen Selinger dated December 7, 2022 (9 pages.) The 9 pages showing the Recorded Deed were attached to the exhibit list. Selinger did not enter the actual unsworn declaration on the Exhibit List as he was to testify about the contents of the declaration at the hearing—where he would be subject to cross examination. But he did enter the contents of the declaration, ie the Deed, onto the Exhibit List and was prepared to testify about it until the ALJ prevented this.

The ALJ makes a rather misleading claim in stating the Selinger did not offer the unsworn declaration into evidence. While it is technically true that Selinger did not offer the unsworn declaration itself into evidence, what he did offer into evidence was the **contents** of the affidavit, ie, the Deed showing Selinger owned the property. Exhibit 3 to this brief is the Hearing transcript. Pages 98 and 99 of the Hearing transcript reflect Selinger making an offer of proof that he would testify that the Deed showed he owned



the property after December 7, 2022. It is rather ludicrous for the Proposal to state that the unsworn declaration should not be considered because it was not offered into evidence as the content of the unsworn declaration was offered into evidence but the ALJ did not allow it into evidence.

3) The ALJ violated her own ruling dated December 13, 2022. Such ruling stated:

“The parties may prefile exhibits related to land ownership by January 10, 2023 **and may present live testimony on the issue at the hearing on the merits.**” (emphasis added)

Yet the ALJ refused to let Selinger testify at the hearing on the issue of land ownership. This order allowing live testimony on the land ownership issue was not conditioned on a witness having prefiled testimony or exhibits. Independently of the bogus rationale to keep Selinger from testifying for not having prefiled testimony (see below for a discussion of this), or for not having prefiled exhibits, the December 13 order allows live testimony on land ownership and the ALJ violated her own order in not allowing Selinger to testify, and Selinger was timely listed as a witness to testify as shown in Exhibit 2.

At the end of the Protestants’ case, they rested and the Judge conveniently instructed the Court reporter to go off the record.

Page 40 line 7 Ms. Rogers: We rest our case.

Judge Davis: Thank you. All right. We can now proceed to the Applicant’s case. We have—let’s go off the record for a minute.”

During this off the record “time out” called by the ALJ, Selinger stated that he would testify. But the Judge stated she would not allow this because Selinger did not pre-file any testimony. Although Selinger was timely listed as a witness to testify on the date to list exhibits and witnesses filed January 17, 2023, and attached as exhibit 2 to this brief, the judge still refused to let him testify. The ALJ’s order for prefiled testimony of September 26, 2022 listed a date for prefiled testimony to be filed but contained no statement or notice that only witnesses who had prefiled testimony would be allowed to testify.

By instructing the Court reporter to go off the record, the ALJ conveniently prevented any transcription of her refusal to allow Selinger to testify. But the ALJ’s refusal to allow Selinger to testify is readily inferred from the fact that Selinger was on



the witness list to testify (Exhibit 2) , the ALJ's refusal to allow any rebuttal testimony (page 94 of attached transcript) , and the offer of proof at the end of the hearing where Selinger testified as to the exhibits that the ALJ prevented him from entering into evidence. (pages 98, 99 of transcript)

TAC 155.429 (c)(1)(A) states that the judge **may require** the *direct* testimony of witnesses to be called at the hearing to be filed in writing prior to the hearing. But as noted in Applicant's closing brief, the ALJ's prefiling order of September 26, 2022 contained **no** such requirement that any witness must prefile their own direct testimony to be able to testify. All the notice gave was a deadline for prefiling testimony but stated no requirement that in order to testify, a witness must have prefiled testimony. Thus the TAC gave the ALJ no basis to exclude Selinger's direct testimony for not having prefiled his direct testimony.

Moreover, there is absolutely no permission for a judge to exclude *rebuttal* testimony contained in TAC 155.429(c)(1)(A). The TAC only discusses prefiling with respect to **direct** testimony yet the ALJ mistakenly used the excuse of lack of prefiling to also rule out any **rebuttal** testimony.

Independently of the first mistake by the ALJ in refusing to allow Selinger to testify on direct testimony if he had not prefiled (when her prefiling order never stated a witness would be excluded if they had not prefiled), the ALJ compounded her mistake by violating her own order of December 10 in not allowing Selinger to testify on the issue of land ownership. The ALJ order of December 10 imposed no requirement that to testify a witness must have prefiled testimony on the matter to be able to testify. Such an order would have made no sense as the prefiling deadline was several weeks before the ALJ even added land ownership as an issue on December 10. Yet the ALJ still went ahead and violated her own order of December 10 by refusing to allow Selinger to testify on the issue of land ownership—even though Selinger was on the witness list.

Selinger made an offer of proof at the end of the hearing about the exhibits (the deed and other excluded exhibits) he would have testified regarding, ie, that the deed showed Selinger owned the property, and that equitable ownership is a common term to describe the owner of a party in contract to purchase a piece of property, and that Selinger was in contract to purchase the property. (pages 98,99 transcript)

The Proposal (page 46) claims that Selinger made a "late argument in his closing brief based on equitable ownership" but that Selinger failed to present necessary evidence to address this claim. The Proposal is mistaken in this regard as well:



First, the argument regarding equitable ownership was not brought up late in the closing argument but was rather raised **immediately** by Selinger in response to the Motion to add land ownership as an issue in the December 12 filing of Selinger—only 7 days after the issue was raised in the December 5 filing of the Executive Director). Selinger pointed out that he was in contract to buy the property and later attached the Deed showing he owned the property in the affidavit shown as Exhibit A and the Deed as Exhibit B.

Second, the ALJ can hardly complain that sufficient evidence was not presented when it was she herself who prohibited Selinger from testifying and offering such evidence.

Third, the ALJ's remarks about Selinger providing "false information" (page 40 of Proposal for Decision) regarding ownership depend entirely upon whether the ownership is equitable ownership or legal ownership. But it was the ALJ herself who prevented evidence on this issue from being submitted—when she barred Selinger from testifying. If "ownership" is understood as equitable ownership, then no false information was on the application as Selinger was in contract to buy the land, was the equitable owner at the time the application was filed, and possessed the property interest that TCEQ staff said is required.

The Proposal (page 37) states that TAC 305.43(c) is not applicable because Selinger did not present written evidence from the actual landowner that authorized Selinger to apply. This argument of the ALJ is mistaken for three reasons. First, once the Draft Permit has been issued, the burden of proof shifts to the Protestants and the Protestants would have had to show Selinger did not have such consent. Second, the affidavit of Selinger in his filing of December 12, signed by Poetry Road LLC's managing member Selinger, stated that Selinger did have such consent to apply. Third, by improperly ruling that Selinger could not testify at the hearing, the ALJ prevented evidence from being entered into the record that Selinger had the written consent of Poetry Road LLC and Waxahachie Creek Ranch LLC to submit the application.

The common theme in all the mistakes of the Proposal is that the Proposal complains that there is not evidence when it was the mistaken rulings of the ALJ that kept the evidence from being accepted into the record in the first place.

Given this ALJ's consistent ignoring of the Osting admission, and the other issues identified above, the ALJ has created at a minimum an appearance of bias or prejudice against the Applicant on this matter.



### III. SELINGER'S DUE PROCESS RIGHTS WERE TRAMPLED UPON AT THE HEARING AND IN THE PROPOSAL FOR DECISION

The Proposal states that Selinger's due process rights were not violated because:

"Selinger was given the opportunity to prefile exhibits concerning the issue of land ownership by January 10, 2023, and he failed to do so. Fn 104" (page 37)

"Selinger had an opportunity to cross-examine both witnesses on that issue during the hearing on the merits. Because Selinger had multiple opportunities to present evidence and cross-examine witnesses to develop his case supporting issuance of the Draft Permit, he was not denied his opportunity to respond to Protestants' case" (page 38)

Contrary to this statement in the Proposal, Selinger's due process and statutory rights were trampled upon by the following actions of the ALJ:

1) Selinger did prefile exhibits on both December 12 and December 19, accompanied by affidavits and the deed showing Selinger owned the property as of December 7, 2022. Yet the ALJ ignores these prefilings and falsely states that Selinger did not prefile any exhibits related to land ownership. This brief supplies the ALJ with the definition of "pre" so hopefully this mistake in the Proposal will be corrected.

2) Selinger did in fact cross-examine Protestants' witness Osting who did in fact admit Selinger owned the land as of the end of December 2022. This crucial admission by Protestants' witness was quoted and highlighted by Selinger's Closing Argument (page 3). Yet the Proposal intentionally omits this crucial admission. It is ***ludicrous*** to submit that Selinger's due process rights were upheld because he was allowed to cross-examine a witness when the crucial admission resulting from that cross-examination is **ignored** by the ALJ and her Proposal for Decision.

3) The ALJ violated her own December 13, 2022 order. Said order stated that the parties "may present live testimony on the issue at the hearing on the merits. Fn 1"

Yet the ALJ prevented Selinger from testifying at the hearing on the land ownership issue. It is again ***ludicrous*** to state that Selinger's due process rights were upheld when he was not given an opportunity to be heard on this crucial issue—with the ALJ contravening her own order. And it will not suffice to state that Selinger was denied because he did not prefile his direct testimony. The order adding land ownership as an issue and allowing testimony on the land ownership issue occurred weeks after the



prefiling deadline, and no requirement to prefile testimony or exhibits was contained in the December 13, 2022 order allowing live testimony on the land ownership issue.

4) Selinger's due process rights were violated when the ALJ violated TAC 155.429 (c) (1)(A) by refusing to let Selinger testify on direct testimony for not having prefiled such testimony when her prefiling order contained no such requirement to prefile direct testimony to be able to testify.

5) Selinger's due process rights were violated when the ALJ mistakenly refused to allow Selinger to testify in **rebuttal** when there is no requirement to prefile testimony to testify as a rebuttal witness. See page 94 of transcript where Selinger inquires about when rebuttal starts, and the ALJ says there is no rebuttal. This is another clear violation of Selinger's due process right to be heard.

6) The ALJ violated Selinger's due process right to be heard when she violated 30 TAC 80.17 (c), which states that the applicant and the executive director may present additional evidence to support the draft permit if a party rebuts a presumption established under Subsection (i-1). In this case, Selinger was denied a chance to present any additional evidence to support the draft permit after Protestants rebutted a presumption because he was never allowed to testify.

7) Selinger's due process rights were violated by the ALJ's refusal to take the judicial notice of the recorded deed showing the property in the name of Selinger as of December 7, 2022. Judicial Notice Rule 201 (f) states that judicial notice "**may be taken at any stage of the proceeding.**" (emphasis added) and Rule 201 (d) states "a court **shall** take judicial notice if requested by a party and supplied with the necessary information." (emphasis added)

In her determined quest to suppress any reference to the deed showing Selinger owned the land, the ALJ violated her **mandatory** duty to take judicial notice. In the ALJ's order denying the request for judicial notice, it mistakenly states that Selinger made a motion to reopen the record. That is **not** the motion Selinger made. His motion was for the Court to take judicial notice of the document showing the recorded deed. The Court violated its **mandatory** duty to take such judicial notice.

There are occasions where judges have discretion to decide whether evidence is admitted, eg, Tex. R. Evid. 403, where courts may exclude prejudicial evidence. What happened in this Hearing is not such an occasion. The ALJ's repeated refusal to allow into evidence the Deed showing Selinger owned the property is not justified by appealing to the discretion judges have in other areas. When Rule 201 (d) says the judge



**shall** take judicial notice, the law does not leave it to the discretion of the judge about whether to take notice. When 30 TAC 80.17 (c) states the Applicant **may** present additional evidence to support the draft permit after Protestants rebutted a presumption, it does **not** say Applicant may present additional evidence to support the draft permit only if the judge exercises her discretion to allow the Applicant to present additional evidence but rather straightforwardly give the Applicant the right to do so by saying the Applicant **may** present additional evidence. And surely no one can argue that the ALJ should only follow her own orders in her sole discretion about whether to follow her orders—as when she refused to allow Selinger to testify when her order said live testimony would be taken on land ownership and Selinger was on the witness list.

In totality, these actions of the ALJ demonstrate a repeated, concerted effort to suppress the fact that Selinger owned the property after December 7, 2022. In the suppression of such fact, and repeated denial for Selinger to testify on land ownership, the ALJ repeatedly violated Selinger's due process right to be heard, as well as the various statutory rights detailed above.

And when—despite the Herculean efforts of the ALJ to suppress the truth—the evidence comes forth from Protestants' own witness Osting that Selinger owns the property as of late December 2022, the ALJ and her Proposal simply ignore the evidence.

In light of the suppression of such evidence of Selinger's land ownership, the denial of Selinger's right to testify, and the violation of Selinger's constitutional and statutory due process right to be heard, the ALJ has created at a minimum an appearance of bias or prejudice against Selinger.

#### **IV. TRANSCRIPT COSTS**

The invoice for the transcription costs is attached as Exhibit 3. The Protestants comprise the three parties of Ellis County, Ennis, and Waxahachie. The Protestants were unsuccessful on three of the four issues that were litigated and should ultimately be unsuccessful on the fourth issue of land ownership. The Protestants should bear all of the costs of the transcript. And at the least, the Protestants should bear 75% of the costs of the transcript. Exhibit 5 shows the total cost of \$1989.50 and that it was paid by Selinger. Selinger should be reimbursed the entire amount, or at least 75% of the amount, or \$1492.12

#### **V. CONCLUSION**

The Applicant does not object to the Proposal for Decision regarding the issues of regionalization, water quality, and licensing.

On the land ownership issue, the Applicant submits that the Hearing was a **sham and a travesty**. A crucial witness (Selinger) was prevented from testifying on land ownership through a series of unlawful rulings that violated Selinger's due process right to be heard.

And when cross examination showed that Selinger was in fact the property owner, the ALJ and her Proposal **simply ignore this crucial fact despite it having been emphasized in Selinger's Closing Argument**. The Proposal should revise Fact 59 to state that Selinger is the owner of the subject property, and state that the permit should be issued. If Fact 59 is not revised, after the testimony of Osting has been emphasized in Selinger's Closing argument as well as in this brief, a disinterested party would conclude the Proposal is intentionally opposed to the true facts of land ownership coming out.

What happened at the Hearing, and is reflected in this Proposal for Decision, was highly improper and irregular. The ALJ should correct the Proposal on the land ownership issue. If not, the Commission or District Court should correct it for her.

Respectfully submitted,

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817-421-0731

### **CERTIFICATE OF SERVICE**

I hereby certify by my signature below that on this      day of May, 2023, a true and correct copy of the above and foregoing documents was forwarded via e-mail or regular mail to the parties on the Service List.

---



The Applicant does not object to the Proposal for Decision regarding the issues of regionalization, water quality, and licensing.

On the land ownership issue, the Applicant submits that the Hearing was a **sham and a travesty**. A crucial witness (Selinger) was prevented from testifying on land ownership through a series of unlawful rulings that violated Selinger's due process right to be heard.

And when cross examination showed that Selinger was in fact the property owner, the ALJ and her Proposal **simply ignore this crucial fact despite it having been emphasized in Selinger's Closing Argument**. The Proposal should revise Fact 59 to state that Selinger is the owner of the subject property, and state that the permit should be issued. If Fact 59 is not revised, after the testimony of Osting has been emphasized in Selinger's Closing argument as well as in this brief, a disinterested party would conclude the Proposal is intentionally opposed to the true facts of land ownership coming out.

What happened at the Hearing, and is reflected in this Proposal for Decision, was highly improper and irregular. The ALJ should correct the Proposal on the land ownership issue. If not, the Commission or District Court should correct it for her.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify by my signature below that on this 17 day of May, 2023, a true and correct ccpy of the above and foregoing documents was forwarded via e-mail or regular mail to the parties on the Service List.



Stephen Selinger

SOAH DOCKET NO. 582-22-1885

TCEQ DOCKET NO. 2021-1442-MWD

APPLICATION BY	)	BEFORE THE STATE OFFICE
	)	
STEPHEN SELINGER	)	
	)	OF
FOR TPDES PERMIT NO.	)	
	)	
WQ0015932001	)	ADMINISTRATIVE HEARING

\*\*\*\*\*

ORAL ADMINISTRATIVE HEARING

JANUARY 25, 2023

(Reported Remotely via Zoom)

\*\*\*\*\*

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Rebecca Smith

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13 Economic Development

14 Chloe Gossett, SOAH Law Clerk

15  
16  
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18  
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1 P R O C E E D I N G S

2 JUDGE DAVIS: Okay. This is SOAH Docket  
3 582-221885, TCEQ Docket No. 2021-1442-MWD. This is the  
4 Application of Stephen Selinger for New Texas Pollutant  
5 Discharge Elimination System Permit No. WQ0015932001.

6 It is January 25th, 2023 at 9:02 A.M. This  
7 is a video conference hearing from the State Office of  
8 Administrative Hearings. My name is ALJ Amy Davis, and  
9 with me is ALJ Rebecca Smith.

10 We've discussed off the record to take this  
11 case -- take the cases out of order. The Applicant will  
12 go first followed by the Protestants and then TCEQ. At  
13 the start of each party's case, we will admit all  
14 unobjected to exhibits. We can then take the rest of the  
15 exhibits that have objections individually with the  
16 witness.

17 It looks like we're going to have about  
18 seven witnesses in this case. My plan is to take a break  
19 whenever our court reporter, Ms. Cox, requests it or if  
20 the witness requests it. Usually I stop around 10:30 for  
21 about 15 minutes, break for lunch at noon for one hour,  
22 return at 1:00, and ALJ Smith will conduct the hearing  
23 until the first break, and then I'll be back until the  
24 end of the day.

25 At this time let's go ahead and start with

1 the Applicant's case.

2 MR. SELINGER: Charlie, are you with us?

3 Can you speak?

4 JUDGE DAVIS: It looks like he's unmuted.

5 So Mr. Gillespie, are you there?

6 And if he needs to dial in, I can take us  
7 off the record and give him a minute to dial in if he  
8 wants to just call by phone.

9 MR. SELINGER: Yeah, I can't figure --

10 JUDGE DAVIS: Oh. Oh, that was

11 Mr. Selinger.

12 I'm going to take us off the record for a  
13 minute.

14 MR. MARTINEZ: Your Honor, if we can  
15 just -- quickly, for the record, I'm Eli Martinez on  
16 behalf of the Office of the Public Interest Counsel.

17 JUDGE DAVIS: Okay.

18 (Recess 9:04 A.M. - 9:19 A.M.)

19 JUDGE DAVIS: All right. We are back on  
20 the record. It's about 9:20 A.M. We tried to get  
21 Applicant's witness with us. They're having some  
22 technical difficulties, and so we have decided not to  
23 proceed with Protestants' case. We have Ms. Rogers here  
24 representing Protestants.

25 And so, Ms. Rogers, go ahead. You may



1 proceed.

2 MS. ROGERS: I'd like to call my first  
3 witness, Mr. Ed Green. So he's ready to be sworn in.

4 JUDGE DAVIS: Mr. Green, if you could raise  
5 your right hand and state your full name for the record  
6 so I can swear you in.

7 THE WITNESS: I'm Edward L. Green, Jr.

8 JUDGE DAVIS: Do you swear or affirm that  
9 the testimony you're about to provide in this proceeding  
10 is the truth, the whole, and nothing but the truth?

11 THE WITNESS: I do.

12 JUDGE DAVIS: Thank you. You may proceed.

13 EDWARD L. GREEN, JR.,  
14 having been first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 QUESTIONS BY MS. ROGERS:

17 Q. Mr. Green, with whom are you employed?

18 A. I'm employed by the City of Ennis.

19 Q. Can you please identify what are marked as  
20 Protestants' Exhibits 1 through 4?

21 A. Yes, ma'am. Exhibit 1 is my prefiled direct  
22 testimony. Exhibit No. 2 is my resumé. Exhibit No. 3 is  
23 a petition requesting water service and sanitary sewer  
24 service for Waxahachie, LLC -- or Waxahachie Creek, LLC.

25 THE REPORTER: Oh, I apologize. I'm sorry

1 to interrupt. I'm having trouble hearing the witness.  
2 He's very quiet I think because he's sitting back at the  
3 end of the table. Is there any way that he could sit  
4 closer to the microphone?

5 MS. ROGERS: We can move the microphone  
6 closer. And he is soft-spoken; so I will -- I will nudge  
7 him to talk louder.

8 THE WITNESS: And I will speak up.

9 THE REPORTER: Okay. Thank you.  
10 Could you go back to Exhibit No. 3?

11 THE WITNESS: Yes, ma'am.

12 A. Exhibit No. 3 is petition requesting water  
13 service and sanitary sewer service for Waxahachie Creek,  
14 LLC. And Exhibit No. 4 is a March 29th, 2021 "Will  
15 Serve" letter from the City of Ennis for Ellis County  
16 Municipal Utility District FM 984.

17 Q. (BY MS. ROGERS) Did you prepare the testimony  
18 that was marked as Exhibit 1, Prefiled Testimony of Ed  
19 Green?

20 A. I did.

21 Q. And do you have any corrections or changes to  
22 your testimony?

23 A. I do not.

24 Q. And if I were to ask you those same questions  
25 today, would your answers be the same?

1 A. They would be the same.

2 MS. ROGERS: I would like to admit  
3 Protestants' Exhibits 1 through 4.

4 JUDGE DAVIS: Do we have any objections to  
5 Protestants' Exhibits 1 through 4?

6 Hearing none, I'm admitting Protestants'  
7 Exhibits 1 through 4.

8 (Protestants' Exhibit 1, Exhibit 2,  
9 Exhibit 3, and Exhibit 4 admitted.)

10 MS. ROGERS: And I will pass the witness.

11 JUDGE DAVIS: All right. Mr. Selinger, it  
12 is your turn to begin your cross-examination.

13 CROSS-EXAMINATION  
14 QUESTIONS BY MR. STEPHEN SELINGER:

15 Q. Mr. Green, isn't it the case you never put in  
16 any numerical estimates of the difference in costs  
17 between the Applicant's proposed plan versus hooking up  
18 to the City sewer?

19 A. I'm sorry, could you restate that question?

20 MR. SELINGER: Can you re-read it, Court  
21 Reporter, please.

22 (Off-the-record discussion.)

23 Q. (BY MR. SELINGER) Isn't it the case, Mr. Green,  
24 that in your prefiled testimony, you had no numerical  
25 estimates of the difference in cost between the Applicant



1 installing his own system versus connecting to City  
2 sewer?

3 A. That is correct.

4 Q. Okay.

5 MR. SELINGER: Nothing further, Your Honor.

6 JUDGE DAVIS: Okay. I'm going to go ahead  
7 and take up OPIC.

8 CROSS-EXAMINATION

9 QUESTIONS BY MR. ELI MARTINEZ:

10 Q. Yes, Mr. Green, just to kind of follow up on  
11 that question, did you develop any numbers after the  
12 fact?

13 A. We have some numbers that are not exactly what  
14 Mr. Selinger asked will be.

15 Q. How so? Could you expand on that?

16 A. We've done some estimates to extend service to  
17 that area, but they included other areas.

18 Q. And have you reviewed the testimony of  
19 Mr. Gillespie?

20 A. I have not.

21 Q. Okay. Do you have any -- any sense of what the  
22 final cost of connection to the system would be?

23 A. I have a sense, but it includes other areas.

24 Q. Okay. So nothing that you could point to that  
25 would say specifically this would be the cost for this

1 particular project to connect it to the -- to your  
2 system?

3 A. One moment, please.

4 Could you restate the question, sir?

5 Q. I'm asking whether or not you specifically have  
6 a dollar amount, even a ballpark figure, as to what it  
7 would take this particular project to be tied into your  
8 system?

9 A. I know we've talked about around \$6 million.  
10 But that number depends on some other things happening.

11 Q. Okay.

12 MR. SELINGER: Your Honor, I guess I have  
13 an objection. He should have put this forth in his  
14 prefiled testimony --

15 JUDGE DAVIS: Oh, Mr. -- Mr. --

16 MR. SELINGER: -- and I don't know why --

17 JUDGE DAVIS: Mr. Selinger, it is not your  
18 time to ask questions.

19 MR. SELINGER: Oh, okay.

20 JUDGE DAVIS: I'm going to ask you to stop  
21 your objecting and let Mr. Martinez finish.

22 Q. (BY MR. MARTINEZ) So Mr. Green, in your -- in  
23 your prefiled testimony you state that -- you discuss  
24 providing service and that it would -- it would require  
25 the extension of a wastewater line to the existing

1 collection system and expansion of two lift stations.

2 Do you recall that part of your testimony?

3 A. Yes.

4 Q. Okay. Now, is that specifically just for  
5 this -- tying in this particular project, or does that  
6 include the other -- the other issues that you were --  
7 that you stated earlier? You said that the ballpark  
8 figure that he'd had included some other -- some other  
9 efforts -- and I'm not certain whether or not the two  
10 lift stations and the extension of the existing  
11 collection system is solely for this project or if it  
12 includes those other issues that you were referring to.

13 A. Okay. So the answer is both. We would have to  
14 extend the gravity line, and we would have to upgrade  
15 those stations for this development --

16 THE REPORTER: "Upgrade the stations," I'm  
17 sorry, you said "upgrade the stations" --

18 THE WITNESS: For this development, for the  
19 Selinger development.

20 THE REPORTER: Okay.

21 Q. (BY MR. MARTINEZ) Okay. And so would the entire  
22 cost of extending the lines and expanding the lift  
23 stations, would Mr. Selinger's development be required to  
24 fund all of that in order to get connected?

25 A. No.



1 Q. So it would be -- it would be kind of -- there'd  
2 be kind of a pro rata distribution of the cost between  
3 what his development requires versus some of the other  
4 projects that that would serve?

5 A. I believe that would be a negotiated point.

6 Q. Okay. I think I understand more clearly now.  
7 Thank you.

8 MR. MARTINEZ: No further questions.

9 JUDGE DAVIS: Okay. Thank you.

10 For the Executive Director.

11 CROSS-EXAMINATION

12 QUESTIONS BY MS. AUBREY PAWELKA:

13 Q. Hello, Mr. Green. My name is Aubrey Pawelka.  
14 I'm representing the Executive Director, and I have just  
15 a few questions for you.

16 Are you an expert in TCEQ rules?

17 A. No.

18 Q. How many TPDES permits have you reviewed?

19 A. I have reviewed two.

20 Q. Are you testifying that this draft permit  
21 violates any TCEQ rules?

22 MS. ROGERS: Objection. Testimony speaks  
23 for itself. It's prefiled testimony.

24 JUDGE DAVIS: I'm going to overrule --  
25 overrule.

1 Go ahead and answer the question, please.

2 A. No.

3 MS. PAWELKA: I pass the witness.

4 JUDGE DAVIS: Okay. Ms. Rogers, your  
5 redirect.

6 MS. ROGERS: I have no more redirect.

7 JUDGE DAVIS: Okay. With that, do we have  
8 your next witness?

9 MS. ROGERS: Yes. I'll call Jeremy  
10 Buechter.

11 MR. BUECHTER: Buechter.

12 MS. ROGERS: Buechter.

13 JUDGE DAVIS: And let's go ahead and go off  
14 the record for a minute.

15 (Off-the-record discussion.)

16 JUDGE DAVIS: All right. We have  
17 Mr. Buechter ready. Go ahead, Ms. Rogers.

18 MS. ROGERS: He needs to be sworn in.

19 JUDGE DAVIS: Yes. Oh, I'm sorry. I  
20 thought -- did you already -- go ahead and state your  
21 full name for the record.

22 THE WITNESS: My name is Jeremy Paul  
23 Buechter.

24 JUDGE DAVIS: And you've raised your right  
25 hand.

1 Do you swear or affirm that the testimony  
2 you're about to provide in this proceeding is the truth,  
3 the whole truth, and nothing but the truth?

4 THE WITNESS: I do.

5 JUDGE DAVIS: Okay. Go ahead, Ms. Rogers.

6 JEREMY PAUL BUECHTER, P.E.,  
7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 QUESTIONS BY MS. EMILY ROGERS:

10 Q. With whom are you employed?

11 A. Schaumberg & Polk, Incorporated, consulting  
12 engineers.

13 Q. Could you please identify what is marked as  
14 Protestants' Exhibits 5 and 6?

15 A. Exhibit 5 is my prefiled direct testimony.  
16 Exhibit 6 is my resumé.

17 Q. Did you prepare the testimony that is marked as  
18 Exhibit 5?

19 A. I did.

20 Q. Do you have any corrections or changes to your  
21 testimony?

22 A. I do not.

23 Q. And if I were to ask you those same questions  
24 today, would your answers be the same?

25 A. They would.



1 MS. ROGERS: With that, I ask that  
2 Protestants' Exhibits 5 and 6 be admitted.

3 JUDGE DAVIS: Any objections to  
4 Protestants' Exhibits 5 and 6?

5 Hearing none, Protestants' Exhibits 5 and 6  
6 are admitted.

7 (Protestants' Exhibit 5  
8 and Exhibit 6 admitted.)

9 JUDGE DAVIS: All right. Mr. Selinger, you  
10 may begin your cross.

11 CROSS-EXAMINATION

12 QUESTIONS BY MR. STEPHEN SELINGER:

13 Q. Mr. Buechter, isn't it the case that, in your  
14 prefiled testimony, there is no testimony regarding the  
15 difference in cost between the Applicant installing his  
16 own system versus hooking up to the City system?

17 A. That is correct.

18 MR. SELINGER: Pass the witness, Your  
19 Honor.

20 JUDGE DAVIS: Okay. OPIC?

21 CROSS-EXAMINATION

22 QUESTIONS BY MR. ELI MARTINEZ:

23 Q. Yes, sir. You testified that Ennis has a  
24 regional wastewater system that is available to serve the  
25 proposed development.

1                   How close are the collection lines in --  
2 from your analysis?

3           A.    They're about -- about two miles away.

4           Q.    Did you read the testimony of Mr. Gillespie?

5           A.    I did not.

6           Q.    Okay. He stated -- he states that the nearest  
7 collection lines are three miles way. Is that -- do you  
8 have any idea why there would be such a large disparity  
9 in kind of the location of those lines? Or if you can  
10 bring any clarity to that --

11          A.    I mean, they're -- they're about two miles in a  
12 direct cross entry line, and they're about 2.7 following  
13 the roadways. So I think that's probably the cause of  
14 the disparity.

15          Q.    Okay. If you were to actually build out the  
16 lines, would they need to follow the roadways, or could  
17 you -- could you connect on (inaudible)?

18          A.    It just depends. You could connect them  
19 directly if you've got the appropriate easements.

20          Q.    Okay. And you also state that the wastewa --  
21 Ennis's wastewater facilities are -- have been built out  
22 adequately to meet the anticipated demand from the -- the  
23 proposed development.

24                   What numbers are you basing that opinion on?

25          A.    Well, I didn't say that they were built out to

1 handle this proposed flow. Ennis has a continuing  
2 Capital Improvements Plan to expand their wastewater  
3 plant to deal with not just this development but many  
4 proposed and future developments. So, you know, building  
5 the plan and expanding to keep up with development is  
6 part of Ennis's general Capital Improvements budget.

7 That number changes on a yearly basis and  
8 really sometimes on a monthly basis. But the structure  
9 of the system at Ennis is to expand to meet demands based  
10 on development.

11 Q. And if -- you know, based on kind of the  
12 build-out timeline of this development, would Ennis be  
13 able to serve the development as it's built out given its  
14 current financial construction and capabilities?

15 A. We have never, that I know of, received any  
16 information on phasing or build-out of this development;  
17 so I don't know the answer to that. The general answer  
18 is that's what the City strives to do. But it generally  
19 involves phasing, especially on a building of this size.

20 Q. Okay. I think that answers my questions. Thank  
21 you.

22 JUDGE DAVIS: All right. For the Executive  
23 Director?

24 CROSS-EXAMINATION

25 QUESTIONS BY MS. AUBREY PAWELKA:



1 Q. Good morning, Mr. Buechter.

2 A. Good morning.

3 Q. Are you an expert in TCEQ rules?

4 A. Some sections of the rules, yes, I think so.

5 Q. Can you identify any TCEQ rule that this draft  
6 permit violates?

7 A. I can simply refer to, I guess, the requests for  
8 regionalization by available local facilities. Just one  
9 minute.

10 So in my direct testimony, I refer to Texas  
11 Water Code 26.003, which is basically the policy to  
12 determine the development use of regional land area,  
13 area-wide waste collection, treatment, and disposal. I  
14 would -- also Texas Water Code 26.0282, which directs  
15 TCEQ to implement the State law regional --  
16 regionalization policy into an individual permitting  
17 case.

18 So I think that, you know, the wastewater  
19 permit itself needs to be run past this standard  
20 before -- before it should be issued.

21 Q. Do you know how TCEQ staff calculated the  
22 average daily flow and peak flow for the proposed  
23 development?

24 A. I do not.

25 Q. Can you point to a TCEQ rule that requires that

1 an applicant must have experience owning a plant to  
2 operate one?

3 A. No. I do not believe there is such a rule.

4 Q. Can you point to a TCEQ rule or requirement that  
5 says the applicant must identify the operator of the  
6 proposed facility?

7 A. I do not believe there is such a rule.

8 MS. PAWELKA: I pass the witness.

9 JUDGE DAVIS: Ms. Rogers, your redirect.

10 MS. ROGERS: Yes, I have just a little bit  
11 of short direct. Okay.

12 REDIRECT EXAMINATION

13 QUESTIONS BY MS. EMILY ROGERS:

14 Q. You were asked if you have reviewed  
15 Mr. Gillespie's testimony.

16 Do you recall that question?

17 A. I do.

18 Q. Okay. In Mr. Gillespie's testimony he has --  
19 it's Exhibit No. 4 to his testimony, and it is a  
20 spreadsheet that was prepared by your firm.

21 Do you recognize that spreadsheet?

22 A. I do.

23 Q. And that spreadsheet identifies a number --

24 Would you please describe that spreadsheet?

25 A. The spreadsheet is a preliminary estimate of the

1 total cost to serve the build-out development of the  
2 Waxahachie Creek Ranch based on the preliminary layout  
3 and the information we had at the time.

4 Q. And what's the time of that?

5 A. April 19th, 2021.

6 Q. And does that document represent the total costs  
7 that the Waxahachie Creek development would have to pay?

8 A. No.

9 Q. Tell me -- please describe what -- how this  
10 total cost might be paid for.

11 A. The City of Ennis has multiple developers  
12 approaching them regularly, and we generally prepare  
13 overall cost estimates to give the City a big picture of  
14 the impact to the system and the total costs of bringing  
15 on a development such as this one. That gives the City a  
16 scope to deal with at the front end with as much  
17 information as available.

18 So I can't speak to how this one would be  
19 directly handled, but the general process is that there  
20 are multiple -- multiple sources of funding to bring  
21 these developments in. There are -- there are bids,  
22 there are tax increment refinance zones, there are  
23 City-paid portions of this, there are development-paid  
24 portions of it. And the distribution of that is a  
25 negotiated process that I'm not typically part of. But



1 that process is usually a negotiation that -- that is  
2 agreed upon by all parties involved when the final  
3 distribution of the cost is assembled.

4 Q. And so this -- the number that's shown on  
5 Exhibit 4, that \$6 million number, it's your testimony  
6 that that number is not the number that Ennis would  
7 charge the developer?

8 A. Based on past experience, that is not a number  
9 that Ennis would charge a developer in a typical -- in  
10 this typical process.

11 MS. ROGERS: I don't have any further  
12 questions.

13 JUDGE DAVIS: Thank you, Ms. Rogers.

14 MR. SELINGER: Your Honor -- Your Honor --

15 JUDGE DAVIS: Mr. Selinger, if you could  
16 please wait until she's done her redirect.

17 MR. SELINGER: Oh, okay.

18 JUDGE DAVIS: You now have an opportunity to  
19 recross. I want to remind you that this recross is  
20 limited to the topics covered by Ms. Rogers in her last  
21 round of questions; so the scope is limited. Should you  
22 ask a question that's outside of that scope, you may  
23 receive an objection.

24 So Mr. Selinger, you have an opportunity to  
25 recross this witness.

1 CROSS-EXAMINATION

2 QUESTIONS BY MR. STEPHEN SELINGER:

3 Q. Sir, isn't it the case that you do not know what  
4 the City would charge or would not charge Mr. Selinger?

5 A. That is correct.

6 Q. Isn't it the case that the City has had over two  
7 years, since a request for water and sewer services was  
8 presented to them, to come up with figures about what  
9 they would actually charge?

10 A. I'm -- I'm not privy to that date. But I  
11 don't -- I don't --

12 Q. Okay.

13 MR. SELINGER: I pass the witness, Your  
14 Honor.

15 JUDGE DAVIS: Okay. Thank you,  
16 Mr. Selinger.

17 OPIC, did you have any recross questions?

18 MR. MARTINEZ: No. I think Mr. Selinger  
19 asked the gist of my questions.

20 JUDGE DAVIS: Okay. And for the Executive  
21 Director?

22 MS. PAWELKA: No further questions, Your  
23 Honor.

24 JUDGE DAVIS: Okay. Ms. Rogers, a final  
25 redirect?

1 MS. ROGERS: I have no additional  
2 questions.

3 JUDGE DAVIS: Okay. Thank you. Thank you  
4 for your testimony today.

5 Ms. Rogers, who is next?

6 MS. ROGERS: Mr. Tim Osting.

7 JUDGE DAVIS: All right. And we will go off  
8 the record for a minute.

9 THE REPORTER: Off the record.

10 (Recess 9:42 A.M. - 9:43 A.M.)

11 JUDGE DAVIS: All right. We have  
12 Mr. Osting.

13 Mr. Osting, if you could state your name for  
14 the record and raise your right hand so I can swear you  
15 in.

16 THE WITNESS: My name is Tim Osting.

17 JUDGE DAVIS: And do you swear or affirm  
18 that the testimony you're about to provide in this  
19 proceeding is the truth, the whole truth, and nothing but  
20 the truth?

21 THE WITNESS: I do.

22 JUDGE DAVIS: All right. Thank you.

23 Go ahead, Ms. Rogers.

24 TIM OSTING,  
25 having been first duly sworn, testified as follows:

## 1 DIRECT EXAMINATION

2 QUESTIONS BY MS. EMILY ROGERS:

3 Q. Mr. Osting, with whom are you employed?

4 A. Aqua Strategies, Incorporated.

5 Q. Could you please identify what are marked as  
6 Protestants' Exhibits 7 through 11.7 A. Yes. Protestant Exhibit No. 7 is the Prefiled  
8 Direct Testimony of Tim Osting. Exhibit No. 8 is my  
9 resumé. Exhibit No. 9 is a protection zone map. Exhibit  
10 No. 10 is Waxahachie Creek Ranch, LLC's deed. And  
11 Protestants' Exhibit No. 11 is Poetry Road, LLC's deed.12 Q. Did you prepare the testimony that is marked as  
13 Protestant Exhibit No. 7?

14 A. I did.

15 Q. Okay. And do you have any changes or  
16 corrections to your testimony?

17 A. I have two minor typographical changes.

18 Q. And can you please identify those by page and  
19 line number?20 A. Yes. On page 15, line 13, there's a T-O, and it  
21 should be changed to a D-O. So instead of saying "It is  
22 clear that the model outputs to do not do," it should  
23 say, "It is fair that the model outputs do not do that."

24 Q. And do you have any other changes?

25 A. Just one other. On page 17, Line No. 5, it says



1 "aquatic live use." It should be changed to "aquatic  
2 life use."

3 Q. Do you have any other changes?

4 A. No, ma'am.

5 Q. And if I were to ask you those same questions  
6 today, would your answers be the same?

7 A. Yes.

8 MS. ROGERS: With that, I ask that  
9 Protestants' Exhibits 7 through 11 be admitted.

10 JUDGE DAVIS: Do we have any objections to  
11 Protestants' Exhibits 7 through 11?

12 Hearing none, Protestants' Exhibits 7  
13 through 11 are admitted.

14 (Protestants' Exhibit 7,  
15 Exhibit 8, Exhibit 9, Exhibit 10,  
16 and Exhibit 11 marked.)

17 MS. ROGERS: And I'll pass the witness.

18 JUDGE DAVIS: Thank you, Ms. Rogers.

19 Mr. Selinger, you may begin your cross of  
20 this witness.

21 MR. SELINGER: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 QUESTIONS BY MR. STEPHEN SELINGER:

24 Q. Sir, the -- do you know as of today who is the  
25 record owner of the subject property, what the -- the

1 deeds show?

2 A. I have seen as of the end of December a change.  
3 I don't recall the exact name, but I believe it's  
4 Mr. Selinger.

5 Q. You believe what?

6 A. Selinger.

7 Q. Yes. Okay. So -- okay.

8 Let me ask you on the -- at the end of your  
9 testimony you quoted 30 TAC 305.43 as stating that -- as  
10 stating that that section says the Applicant must be the  
11 owner of the property, that the Applicant is not the  
12 owner as required by that TAC code.

13 Now, did you -- did you read the TAC before  
14 you submitted that testimony under oath?

15 A. I believe I did.

16 Q. Are you now aware that it says no such thing as  
17 you quoted it as saying?

18 A. I'm not aware.

19 MR. SELINGER: Well, I'd ask Your Honor  
20 to -- our filings have previously covered this. It  
21 simply doesn't say that.

22 JUDGE DAVIS: Just --

23 MR. SELINGER: So I'll pass the witness.

24 JUDGE DAVIS: All right. Thank you, Mr. --

25 MR. SELINGER: I'll pass the witness.

1 JUDGE DAVIS: Okay. Thank you.

2 OPIC?

3 CROSS-EXAMINATION

4 QUESTIONS BY MR. ELI MARTINEZ:

5 Q. Just a couple quick questions. Good morning,  
6 Mr. Osting.

7 In your prefiled testimony, it says that you  
8 were not permitted access to the proposed discharge  
9 location to measure existing on-site conditions related  
10 to the discharge path.

11 Could you tell me what you would have --  
12 would have been able to evaluate with that information in  
13 hand?

14 A. Yes. I would've been able to verify the  
15 Applicant information and information included in the  
16 application, including stream depths, stream widths, the  
17 geometry of the -- the unnamed tributary as well as  
18 Waxahachie Creek immediately downstream or at the  
19 confluence of the unnamed tributary at Waxahachie Creek.

20 Q. And how would those characteristics factor into  
21 your analysis?

22 A. I would have been able to do a site-specific  
23 assessment to determine whether the existing dissolved  
24 oxygen model was correct or not.

25 Q. I'm speaking of the dissolved oxygen model. You

1 speak about the algae cycle and how it should have  
2 included both the -- you know, photosynthesis and  
3 respiration modes of -- and how that would change the  
4 predictions for dissolved oxygen concentrations. And the  
5 numbers that I see are 4.8 millimeter per liter versus  
6 4.786 milligrams per liter -- per liter.

7                   And being a layperson, I don't think I fully  
8 appreciate what that difference in numbers portends in  
9 real life. Can you tell me what the -- what that might  
10 look like -- a change between those two metrics might  
11 look like in terms of aquatic life or just in terms of  
12 water quality generally?

13           A. That is a very small number change. The water  
14 quality standard is such that the dissolved -- the  
15 average dissolved oxygen in the water body should be  
16 maintained above 5.0. There's a convention that TCEQ  
17 uses to allow a value of 4.80 to -- to be equivalent to  
18 5.0; so they round up and then use that 4.80 as a  
19 threshold.

20                   I was pointing out that -- that with that  
21 change, just that singular change at that one location in  
22 the model, that it -- it would be lower than the 4.80,  
23 and so the -- without that change to the model, the model  
24 would not satisfy the TCEQ criteria, and then -- and  
25 changes to the permit limit would have been required in



1 order to meet the 4.80.

2 Q. I understand. Thank you for that.

3 You also testify about how the model does  
4 not consider sulfate and that sulfate is causing a water  
5 quality impairment to Bardwell Reservoir. You also have  
6 similar concerns about bacteria and nitrate.

7 I'm wondering whether or not a nonpackaged  
8 plan, a regional plan like City of Ennis would -- would  
9 have a -- could effectuate a difference in water  
10 quality -- in other words, is a packaged plan, like the  
11 one that's being proposed here, incapable of treating it  
12 to the correct levels? Or is there some limitation of  
13 the facility itself or just the way that the permit is  
14 written?

15 A. As to the sulfates, that depends on the water  
16 source. And I believe that, if given the opportunity to  
17 connect to a City sewer, they would also be given the  
18 opportunity to connect to the City water. And that water  
19 supply would be of a higher source water quality.

20 Groundwater as a source in this particular  
21 area as a site-specific assessment has a very high  
22 sulfate content, and that would not be treated in the  
23 wastewater treatment plant, and the sulfate would,  
24 therefore, be discharged into the unnamed tributary, into  
25 Waxahachie Creek, into Bardwell Reservoir where there's

1 already a sulfate impairment. So the sulfate is being --  
2 it's increasing the concentration of the sulfate.

3 As to the other parameters, depending on the  
4 exact nature of the plants, the treatment plants, the  
5 nitrate or the nitrogen level could be treated to a  
6 higher level and, therefore, the nitrate could be lower.

7 And as to the bacteria, the plants will  
8 generally have disinfection. But the permit limit is  
9 high enough such that -- such that it -- it could impact  
10 the Surface Water Quality Standards impairment status  
11 right now because there's already significant bacteria  
12 content in the data that I found for Waxahachie Creek.

13 Q. I understand. Thank you.

14 Did you read Mr. Gillespie's prefiled  
15 testimony?

16 A. I did.

17 Q. I take it -- and please correct me if I took it  
18 wrong, but I take it from that testimony that the City of  
19 Ennis generally uses the same methods of treatment in  
20 their plant and treats to the same -- generally the same  
21 effluent site.

22 Is that your understanding, is that  
23 incorrect?

24 A. That's not my understanding, but I -- I do not  
25 know all the details.

1 Q. Okay. I think those are my questions. Thank  
2 you.

3 A. Thank you.

4 JUDGE DAVIS: Okay. For the Executive  
5 Director.

6 CROSS-EXAMINATION

7 QUESTIONS BY MS. AUBREY PAWELKA:

8 Q. Good morning, Mr. Osting.

9 A. Good morning.

10 Q. How many TPDES permits have you reviewed in  
11 career?

12 A. Over 10, possibly 15.

13 Q. And do you consider yourself an expert in TCEQ  
14 rules?

15 A. Portions of them.

16 Q. Can you identify specific TCEQ rules that the  
17 QUAL-TX model violates?

18 A. I believe the -- I believe the surface water  
19 quality standard related to anti-degradation and possibly  
20 also that related to just achievement of the surface  
21 water quality standards.

22 Q. Have you reviewed Ms. Robertson's memo? It's  
23 ED-JR 3.

24 A. I don't have that in front of me.

25 Q. Do you know if you reviewed inputs she used for

1 the QUAL-TX model?

2 A. I did review the inputs of the QUAL-TX model,  
3 yes.

4 Q. Do you know how the inputs for the QUAL-TX model  
5 are established?

6 A. Yes.

7 Q. And were those inputs consistent with TCEQ  
8 practice and procedure?

9 A. Yes, generally they were.

10 Q. Do you know if the QUAL-TX model has been  
11 approved by EPA?

12 A. I believe it has, yes.

13 Q. Is there any specific State law or TCEQ rule  
14 that prohibits discharges into single source zones?

15 A. I don't know.

16 MS. PAWELKA: I pass the witness.

17 JUDGE DAVIS: All right. Ms. Rogers, your  
18 redirect.

19 MS. ROGERS: If you could give me a couple  
20 minutes.

21 JUDGE DAVIS: Sure.

22 MS. ROGERS: Do you want to go off the  
23 record?

24 JUDGE DAVIS: Let's go off the record.

25 THE REPORTER: Off the record.



1 (Recess 9:56 A.M. - 9:57 A.M.)

2 JUDGE DAVIS: All right. Ms. Rogers, your  
3 redirect.

4 REDIRECT EXAMINATION

5 QUESTIONS BY EMILY ROGERS:

6 Q. You were asked whether or not the QUAL-TX's  
7 model violates a TCEQ rule.

8 Can a model violate the rule?

9 A. No. It would be the result of the model or the  
10 interpretation of the model.

11 Q. And is it your opinion that the results from the  
12 modeling indicate there's a potential for exceedance of  
13 water quality standards?

14 A. I think there's a potential for exceedance of  
15 water quality standards related to dissolved oxygen, if  
16 the algae is not accounted for.

17 THE REPORTER: I'm sorry, what was the end  
18 of your answer? "If the algae is not" --

19 THE WITNESS: Is not accounted for.

20 THE REPORTER: Okay.

21 Q. (BY MS. ROGERS) And is sulfate levels determined  
22 through the QUAL-TX model?

23 A. No, they're not considered in the model.

24 Q. And what is your opinion regarding the potential  
25 for sulfate to not -- that the discharge of additional

1 sulfate would impair water quality standards?

2 A. My opinion is the discharge of additional  
3 sulfate would contribute to their current impairment. It  
4 would cause and contribute to existing causes to violate  
5 Surface Water Quality Standards.

6 Q. And is Bardwell or Lake Bardwell, which is  
7 downstream at the proposed discharge, is it currently  
8 violating water quality standards?

9 A. Yes, for sulfate.

10 Q. And is there a mechanism, a biological  
11 mechanism, to remove sulfate after it's been discharged?

12 A. No. No. There's -- there's no typical  
13 biological method -- there are other methods to remove it  
14 that are different than the type of plant that's  
15 proposed.

16 Q. But the sulfate would have to be removed prior  
17 to discharge; correct?

18 A. Yes.

19 MS. ROGERS: I pass the witness.

20 JUDGE DAVIS: Okay. Mr. Selinger, do you  
21 have any recross on this topic?

22 MR. SELINGER: No, Your Honor.

23 JUDGE DAVIS: Okay. OPIC?

24 CROSS-EXAMINATION

25 QUESTIONS BY MR. ELI MARTINEZ:

1 Q. Just maybe one or two clarifying questions.

2 You were asked about sulfates. And again,  
3 I'm just trying to get -- wrap my nonexpert head around  
4 that.

5 Sulfates are types of salt; right?

6 A. That's correct, yes.

7 Q. And what does -- what does high levels of  
8 sulfate effectuate in the environment?

9 A. High levels of sulfate in drinking water can  
10 cause -- can cause stomach problems unless there is a  
11 high level of treatment to reduce it. So I believe EPA  
12 standards is around 250 milligrams per liter. The source  
13 water in our area is roughly 400 milligrams per liter,  
14 which would be discharged at that 400 level. And the  
15 water quality standard in Bardwell Lake, I believe, is  
16 50 milligrams per liter. So it's -- it's largely a  
17 drinking water issue downstream.

18 Q. Okay. And does the -- does the permit control  
19 for sulfates at all in your understanding?

20 A. Not in my understanding. There's no specific  
21 limit.

22 Q. Okay. And is the type of plant that's being  
23 proposed capable of treating sulfates to the standard  
24 that you set up?

25 A. I do not believe that the plant is capable of

1 treating the sulfates as proposed.

2 Q. Okay. So it would need additional capabilities,  
3 or it would need a complete redesign? Or what -- what  
4 would have to change about it?

5 A. It would need to be a different type of plant,  
6 yes.

7 Q. I think I -- I think I understand that better.  
8 Does the QUAL-TX model that you and  
9 Ms. Rogers were talking about, does that indicate the --  
10 levels of sulfate? Is that what --

11 A. It does not.

12 Q. It does not. Okay.

13 A. No.

14 Q. Okay. I think that answers my questions. Thank  
15 you.

16 JUDGE DAVIS: All right. The Executive  
17 Director.

18 CROSS-EXAMINATION

19 QUESTIONS BY MS. AUBREY PAWELKA:

20 Q. Mr. Osting, did Ms. Robertson follow TCEQ rules  
21 when she ran the QUAL-TX model?

22 A. I believe she did for the dissolved oxygen  
23 analysis.

24 MS. PAWELKA: No further questions.

25 JUDGE DAVIS: Okay. Ms. Rogers, any final



1 redirect?

2 MS. ROGERS: I have no additional  
3 questions.

4 JUDGE DAVIS: All right. Thank you,  
5 Mr. Osting, for your testimony today.

6 Ms. Rogers, anything else?

7 MS. ROGERS: We rest our case.

8 JUDGE DAVIS: Thank you. All right.

9 We can now proceed to the Applicant's case.  
10 We have -- let's go off the record for a minute.

11 THE REPORTER: Off the record.

12 (Recess 10:03 A.M. - 10:03 A.M.)

13 JUDGE DAVIS: All right. We are now moving  
14 to the Applicant's case.

15 So Mr. Selinger, if you'd like to present  
16 your witness, please.

17 MR. SELINGER: Okay, Your Honor. Is he  
18 going to get sworn, or are we just --

19 JUDGE DAVIS: Yes.

20 MR. SELINGER: -- how does that -- that  
21 work?

22 JUDGE DAVIS: Just -- just offer him, just  
23 Mr. -- you're presenting Mr. Gillespie.

24 MR. SELINGER: Mr. Gillespie, everything  
25 you say will be said under penalty of perjury --

1 JUDGE DAVIS: Oh, Mr. Selinger, I'll do  
2 that. All right. I'll --

3 MR. SELINGER: Oh.

4 JUDGE DAVIS: You've called Mr. Gillespie as  
5 your witness in this case.

6 So Mr. Gillespie, if you'll state your full  
7 name, and I will swear you in.

8 THE WITNESS: It is Charles Pace Gillespie,  
9 III.

10 JUDGE DAVIS: All right. And do you swear  
11 or affirm that the testimony you're providing in this  
12 proceeding is the truth, the whole truth, and nothing but  
13 the truth?

14 THE WITNESS: I do.

15 JUDGE DAVIS: All right. Okay,  
16 Mr. Selinger, go ahead with your presentation. If you  
17 have any exhibits, let's do those first.

18 MR. SELINGER: Okay. I'd like to admit  
19 Exhibits 1 through 8.

20 JUDGE DAVIS: Okay. Do --

21 MR. SELINGER: Per --

22 JUDGE DAVIS: Oh, go ahead, Mr. Selinger.

23 DIRECT EXAMINATION

24 QUESTIONS BY MR. STEPHEN SELINGER:

25 Q. Mr. Gillespie, have you changed anything in your

1 prefiled testimony?

2 A. No, I have not.

3 Q. Okay. And nothing in the declaration that  
4 previously I have marked as Exhibit 2 -- nothing changed  
5 there?

6 A. Correct.

7 Q. Okay. Exhibits 3 through 8, you're familiar  
8 with those?

9 A. Yes, sir.

10 MR. SELINGER: Okay. I'd like to move to  
11 Exhibits -- admit Exhibits 1 through 8.

12 JUDGE DAVIS: Okay. Do we have any  
13 objections -- we can take these up one at a time -- to  
14 Exhibit 1?

15 MS. ROGERS: I -- I want to clarify what  
16 exhibits they are. I've got all kinds of different  
17 numbered exhibits; so --

18 JUDGE DAVIS: Yes. Let's go ahead and go  
19 through -- I'm using the exhibit list that was filed.

20 So Mr. Selinger, if you could walk  
21 through -- take Mr. Gillespie and have him identify what  
22 these remaining exhibits are for the record, please.

23 MR. SELINGER: Okay. Exhibit 1 is prefiled  
24 testimony of Charles Gillespie. Exhibit 2 is the  
25 declaration of Charles Gillespie. Exhibit 3 is an e-mail

1 of Jim Wehmeier to Steve Selinger with an attachment,  
2 dated June 3rd, 2021. Exhibit 4 is a proposal of  
3 Southwest Fluid Products. Exhibit 5 is the printout of  
4 TCEQ website stating no wastewater plants have ever been  
5 denied solely based on regionalization. Exhibit 6 a  
6 Warranty Deed from Poetry Road to Stephen Selinger, dated  
7 December 7, 2022. Exhibit 7 is a glossary regarding  
8 "equitable title" from Westlaw.com. Exhibit 8 is  
9 definition of "equitable ownership" from brightmls.com.

10 MS. ROGERS: And I object to Exhibits 2  
11 through 8. These were not prefiled testimon -- these  
12 were not prefiled.

13 JUDGE DAVIS: All right. Let me check.  
14 And OPIC and the ED, do you have any  
15 objections to any of these exhibits? We'll just take  
16 them all up.

17 MS. PAWELKA: No, Your Honor.

18 MR. MARTINEZ: The OPIC has none.

19 JUDGE DAVIS: All right. I'm just pulling  
20 up my case file. And you said, Ms. Rogers, Exhibits 2  
21 through 8 were your objections?

22 MS. ROGERS: Yes. So the prefiled  
23 testimony had his Exhibit 1, which was his prefiled  
24 testimony. Exhibit 2 was his Statement of  
25 Qualifications. Exhibit 3 was a TC -- TAC Code regarding



1 facility ownership and Poetry Road letter. And Exhibit 4  
2 was Ennis costs of sewer versus on-site wastewater  
3 system. And Exhibit 5 is a copy of request for service  
4 letter to the City of Waxahachie.

5 He has -- he is attempting to add a  
6 declaration -- and be reminded that he prefiled his  
7 testimony after the Protestants prefiled; so he had an  
8 opportunity to address all of these issues after he --  
9 after we prefiled but before he prefiled his testimony.

10 He's attempting to add additional exhibits,  
11 some of them may be the same -- I believe 4 is the same  
12 as page 2 of Exhibit -- of his new Exhibit 3, and  
13 Exhibit 4 is the same as Exhibit -- something he already  
14 has as Exhibit 4.

15 JUDGE DAVIS: Okay.

16 MS. ROGERS: But beyond that, everything  
17 else is -- is new.

18 JUDGE DAVIS: Okay. And I'm looking at the  
19 procedural schedule, and I'm seeing the deadline that was  
20 set in that. Okay. I understand. Let me just -- give  
21 me one minute. I'm just pulling up -- there are a lot of  
22 documents here.

23 Okay. It does appear that these are new and  
24 filed after that prefiling deadline, and so I will  
25 sustain that objection to Exhibits 2 through 8. Okay.

1 So we are admitting Exhibit 1 for applicant.

2 (Applicant's Exhibit 1 admitted.)

3 MR. SELINGER: Any of the exhibits --

4 JUDGE DAVIS: I'm sorry, Mr. Selinger?

5 MR. SELINGER: And any of the exhibits that  
6 were previously filed in his prefiled testimony; is that  
7 correct?

8 JUDGE DAVIS: Let me pull those up.

9 If they were part of that prefiled  
10 original -- you know, within the deadline, those  
11 attachments should be fine. But let me just make sure.

12 And those attachments, can you identify what  
13 those would be?

14 MR. SELINGER: I think Ms. Rogers just did.  
15 I don't -- let me go see. I think Exhibits 3 and 4 --

16 JUDGE DAVIS: Right.

17 MR. SELINGER: -- were previously filed.

18 JUDGE DAVIS: Okay. Yes. Anything --  
19 okay. Anything that's part of that prefile -- any of the  
20 attachments that were in that prefiled exhibit are  
21 included. Okay?

22 MR. SELINGER: Okay.

23 JUDGE DAVIS: All right. And so we will  
24 start our cross of Mr. Gillespie. And we will start  
25 with -- we will start with the -- I'm sorry, give me one

1 second. I have a lot of windows open.

2 We'll start with the Executive Director.

3 MS. PAWELKA: No questions, Your Honor.

4 JUDGE DAVIS: Okay. Moving on to OPIC.

5 CROSS-EXAMINATION

6 QUESTIONS BY MR. ELI MARTINEZ:

7 Q. Just a couple of quick ones.

8 Good morning, Mr. Gillespie. I read through  
9 your prefiled testimony, and you state that the proposed  
10 wastewater treatment plant is an activated sludge process  
11 that has operated in the extended aeration mode and that  
12 this is fundamentally the same as the facilities at the  
13 City of Ennis, the Oak Grove Wastewater Treatment  
14 Facility.

15 Is -- is that -- did I summarize that  
16 correctly?

17 A. That's correct.

18 Q. Okay. And do you know if it's -- what the  
19 difference is in the effluents and the permits might be  
20 in terms of what pollutants can be discharged?

21 A. Yes. Hang on just a second.

22 So the City of Ennis has BOD levels set at 7  
23 where ours is set at 10. They also have total suspended  
24 solids at 15; ours is set at 15. That's on their Phase  
25 1.

1                   On Phase 2 that changes to reduced, which is  
2 typical. They're putting out 4 million gallons where  
3 we're putting out 400,000 gallons, but the levels are  
4 lower than what we have.

5           Q.    Gotcha. I was -- I probably couldn't hear it.  
6 I was -- in the earlier testimony, but I was -- asked  
7 Mr. -- I might mispronounce his name -- Buechter about  
8 where the collection lines were located for the City of  
9 Ennis. And he was -- estimated about two miles away.  
10 And it seems as though you have estimated about three  
11 miles away.

12                   Can you explain what the disparity is there?

13           A.    Yeah, they've got a line that's headed -- I'm  
14 gonna say northwest that covers a -- like a racetrack  
15 area over there. And that was -- we -- we did not see  
16 that in our initial review of locations because -- you  
17 know, we just didn't see it go out past the City.

18           Q.    So would it be closer to two miles or three  
19 miles to connect?

20           A.    Sorry?

21           Q.    Would it be closer to two miles or three miles  
22 to connect into the system?

23           A.    It would be closer to two -- to three miles to  
24 connect.

25           Q.    Okay.



1       A.    I think he mentioned earlier, you know, if you  
2 could get a direct line, that would reduce that, of  
3 course, as a crow flies, but no one's gonna be able to --  
4 well, realistically, no one's going to be able to achieve  
5 all of those easements around a wastewater line through  
6 all those properties. So you would follow the roadways  
7 as -- you know.

8       Q.    Okay. So that doesn't change any of the  
9 estimates that you have for connecting that are reflected  
10 in your prefiled?

11      A.    No, sir.

12      Q.    Okay. It looks like it's about \$6.8 million to  
13 connect to the -- to the system as set forth in your  
14 prefiled, the information that you got from the City  
15 consultant. It seemed, as -- as Mr. Green earlier said,  
16 that not all that \$6 million would be required to come  
17 from the -- Mr. Selinger or this proposed project.

18               Do you have any sense or do you have any  
19 information about whether or not some of those costs  
20 would be allocated?

21      A.    No, sir. I don't think anybody else would  
22 either. We just wouldn't know. You know, it's just like  
23 any -- any engineering budgetary cost; you just come up  
24 with what that cost or that field of cost -- of project  
25 would cost. So we would have no idea if we could get a

1 grant -- well, say we got a USDA, a CDBG grant, it takes  
2 two or three years to get that, to get it approved. The  
3 City's gotta go through their process. If they were  
4 going to assist tax reductions -- any of those options  
5 are available, but we don't know what those area and  
6 wouldn't know until you actually started the process.

7 Q. But you'd have to prepare for that -- that  
8 \$6.8 million cost one way or the other, would you not?

9 A. Right.

10 Q. Whereas if you started your own system, you'd  
11 have more hard and fast numbers as to what the actual  
12 cost would be?

13 A. Right.

14 Q. And I understand that you're testifying that  
15 the -- that that difference, that disparity would be  
16 about \$2.4 million, is that correct, in up-front costs?

17 A. I believe so, yes.

18 Q. Okay. I think that answers my questions. Thank  
19 you very much.

20 JUDGE DAVIS: All right. And now,  
21 Protestants, Ms. Rogers?

22 CROSS-EXAMINATION

23 QUESTIONS BY MS. EMILY DAVIS:

24 Q. Good morning, Mr. Gillespie. This is Emily  
25 Rogers.

1 A. Hello, Ms. Rogers.

2 Q. When you prepared the application, were you  
3 aware that the proposed plant was in the extraterritorial  
4 jurisdiction of the City of Ennis?

5 A. It's been a couple years ago. I don't recall  
6 that.

7 Q. And are you aware that a proposed MUD -- that  
8 the -- Mr. -- that there is a proposed MUD or was a  
9 proposed MUD that was going to be created to serve this  
10 property?

11 A. Yes.

12 Q. And that proposed MUD included the property in  
13 which the proposed wastewater treatment plant is located;  
14 correct?

15 A. Yes, sir -- yes, ma'am, I'm sorry.

16 Q. And are you aware that the engineering report of  
17 that proposed MUD indicated that groundwater would be  
18 used as a water supply?

19 A. No, ma'am. I was not involved in the MUD  
20 application.

21 Q. Prior to filing the wastewater discharge permit  
22 application, you didn't contact Ennis about service;  
23 correct?

24 A. Correct. As we mentioned earlier, we didn't  
25 think they were within a three-mile radius.

1 Q. Did you review any of the information publicly  
2 available on Ennis's website to determine if the proposed  
3 plant was within two miles of Ennis's collection system?

4 A. Yes, we did.

5 Q. And what information was that?

6 A. Again, that was three years ago, I couldn't  
7 really recall. But it's typical to log onto the site and  
8 see what their maps are.

9 Q. And are you aware that they have their  
10 collection system available online?

11 A. Yes. We are now. And the line is -- if I  
12 understand correctly -- is too small to handle this,  
13 which would mean a replacement --

14 MS. ROGERS: Objection -- objection, Your  
15 Honor. That's nonresponsive.

16 JUDGE DAVIS: Yes. Mr. Gillespie, if you  
17 could answer just the question asked.

18 THE WITNESS: I apologize.

19 JUDGE DAVIS: That's all right.

20 Q. (BY MS. ROGERS) How many connections are you  
21 anticipating this wastewater discharge or wastewater  
22 treatment plant will serve?

23 A. I think it's 1,700. Do you want -- do you need  
24 me to look that number up?

25 Q. Sure.

1       A.     And we rounded it off to 1,800. 1,700 was the  
2 actual plant, but --

3               THE REPORTER:   What was that again?

4       A.     We rounded it off to 1,800. The actual number  
5 was 1,777 but rounded it off to 1,800 homes.

6       Q.     (BY MS. ROGERS) Okay. On page 6 of your  
7 testimony, you reference an Exhibit 3. What is this  
8 exhibit? Well, could you -- on page 6 of your testimony,  
9 it says under -- it -- the question was "Please explain  
10 the type of wastewater treatment facilities being  
11 proposed by the Applicant." And you say it's the same  
12 that Ennis is proposing.

13               And under Exhibit -- and you mention "under  
14 Exhibit 3 which flows into Bardwell Reservoir Segment  
15 0815, the exact same reservoir as the Applicant."

16               But when I look at Exhibit 3, it looks like  
17 it's rules.

18       A.     Yeah. Originally Exhibit 3 was the City of  
19 Ennis NAPD, which details the type of wastewater system.  
20 That's all I was pointing out was that they have the  
21 identical type of system that this plant will be.

22       Q.     So that's not Exhibit 3. What's -- what is in  
23 your prefiled testimony is not what's listed here as  
24 Exhibit 3; correct?

25       A.     Evidently from what you're saying, yes.



1 Q. Okay. On page 7 of your prefiled testimony, you  
2 reference a letter from the City.

3 What's -- what city are you referring to  
4 there?

5 A. Oh, Ennis.

6 Q. And what -- would you please identify the  
7 letter?

8 A. That's the letter that tells you how much the  
9 cost is. Mr. Buechter went through that.

10 Q. Do you know who that document came from and who  
11 it went to?

12 A. I think Mr. Selinger, but I don't have it in  
13 front of me; so no, ma'am, I don't. I believe --

14 Q. And --

15 A. -- Mr. Buechter --

16 Q. -- the document that you've listed in -- that  
17 you have in your prefiled testimony under Exhibit 4 is  
18 dated April 19th, 2021. That document was created after  
19 the Applicant filed its application of the TCEQ; correct?

20 A. Correct.

21 Q. And did you have any discussions with the City  
22 regarding these improvements and costs?

23 A. No.

24 Q. Did you know if all of --

25 Do you know if all of these improvements

1 would have been ones Selinger would have been required to  
2 make?

3 A. Looking at the report, they would be.

4 Q. You said they would not?

5 A. Would.

6 Q. And what's the basis for that opinion? Since  
7 you had no discussions with the City, how do you know  
8 that they would be required to incur all those costs?

9 A. As I mentioned, from the report provided, in  
10 review of that, it appears that all of those components  
11 would need to be installed --

12 Q. And so you're --

13 THE REPORTER: Oh, I'm sorry. I'm sorry, I  
14 didn't hear the end of the answer. "Those components  
15 would need to be"...

16 A. -- installed to prepare the system.

17 Q. (BY MS. ROGERS) And the report you're talking  
18 about is this one-page paper that says it's dated  
19 April 19th, 2021; correct?

20 A. I'm not looking at it; so I couldn't tell you  
21 that, ma'am.

22 Q. Can you look at it?

23 A. No, I could not.

24 MS. ROGERS: Judge, that puts me in a  
25 particularly awkward situation when I need an answer from

1 a witness, and he's not able to pull up documents or see  
2 them.

3 JUDGE DAVIS: Yes. Mr. Gillespie, why --  
4 why are those not available to you at this time?

5 THE WITNESS: Well, I can go over to my  
6 computer and log on and print that out and bring it back  
7 if you would like for me to do that.

8 JUDGE DAVIS: How long would that take you?

9 THE WITNESS: That's -- but I just don't  
10 have it in my file right here.

11 JUDGE DAVIS: I think now let's go ahead  
12 and go off the record. We're going to take a break.

13 THE REPORTER: Okay. Off the record.

14 (Recess 10:23 A.M. - 10:39 A.M.)

15 JUDGE DAVIS: All right. Let's get back on  
16 the record.

17 Q. (BY MS. ROGERS) I believe, Mr. Gillespie, I was  
18 asking you to turn to Exhibit 4 of your testimony.

19 Do you have that in front of you?

20 A. The recommended minimum wastewater upgrades?

21 Q. It's title -- it's dated April 19th, 2021.

22 A. Okay. Go ahead.

23 Q. And you were -- you mentioned a report, and I  
24 was asking you if the report that you were referencing is  
25 this page?

1 A. Yeah.

2 Q. Was that a "yes"?

3 A. Yes, ma'am, I'm sorry.

4 Q. Do you know how many connections this -- this  
5 estimate of costs was anticipating?

6 A. Yes, ma'am. It was a request for the full  
7 system.

8 MS. ROGERS: Objection. Nonresponsive.

9 JUDGE DAVIS: Mr. -- Ms. Rogers, can you  
10 re-ask that question?

11 Q. (BY MS. ROGERS) Do you know how many connections  
12 this document was anticipating? Is it written anywhere  
13 on this document how many connections this document was  
14 anticipating covering?

15 A. It is not written on this document, no, ma'am.

16 Q. Did you have any discussions with the City  
17 regarding credits or offsets to the costs of constructing  
18 facilities to connect the development to the City system?

19 A. Yes, no, ma'am.

20 Q. Did you do any water quality modeling to  
21 determine if the permit effluent limits will be  
22 protective of the water quality standards?

23 A. No, ma'am.

24 Q. Does the proposed plant that you've identified  
25 in the application have the capabilities of removing

1 chlorides, sulfate, or TDS from the wastewater?

2 A. I would say not sulfate.

3 Q. Do you know what percentage of dissolved  
4 constituents is removed during treatment?

5 A. Well, typically TDS is for public drinking water  
6 and TSS is for wastewater. I believe that's -- is that  
7 the way we're going, the wastewater?

8 Q. I asked a question. Do you know what the  
9 percentage of dissolved constituents is removed during  
10 treatment?

11 A. I would not know that without a plant in  
12 operation, no.

13 Q. And you would agree with me that, if the source  
14 water is high in sulfate and that sulfate is not removed  
15 during the treatment process, it will be discharged into  
16 the receiving stream; correct?

17 A. Logically, that's correct.

18 Q. If Lake Bardwell is high in sulfates, does that  
19 affect the treatment of water during a drinking water  
20 treatment process?

21 A. A different type of drinking water treatment  
22 process, that's correct.

23 Q. And if the proposed discharge has sulfate, there  
24 will be an increase in sulfate in the downstream water;  
25 correct?



1 A. Yes.

2 MS. ROGERS: Judge, just give me one  
3 second.

4 I'll pass the witness.

5 JUDGE DAVIS: Okay. Mr. Selinger, you have  
6 an opportunity for redirect of this witness.

7 MR. SELINGER: Yes, Your -- yes, Your  
8 Honor.

9 REDIRECT EXAMINATION

10 QUESTIONS BY MR. STEPHEN SELINGER:

11 Q. Mr. Gillespie, what is the difference in cost  
12 between the City providing wastewater, as shown on their  
13 document dated April 19th, 2021, versus the Applicant's  
14 build-out of his system?

15 A. Cost for -- the proposed cost for the City's  
16 system was roughly 6.8 million. The proposed cost for  
17 Selinger's system is roughly 2.4 million.

18 Q. That's 4.4 million --

19 A. Difference.

20 Q. Yes. Okay.

21 You testified and you were asked questions  
22 previously about distance to existing sewer lines and  
23 whether they were 2.0 miles or 2.6 miles.

24 If both lines are undersized and can't be  
25 used, per the City estimate, what did they say -- how

1 many miles -- how many linear feet and how many miles of  
2 new lines needed to be constructed to serve this project?

3 A. So the City's estimate was 7.23 miles of either  
4 new or replaced -- replaced existing systems.

5 Q. Okay. That's a far cry from 2 miles or 2.6 or 3  
6 miles?

7 MS. ROGERS: Objection, Your Honor. That's  
8 not a question.

9 MR. SELINGER: It is a question. I raised  
10 my voice.

11 Q. (BY MR. SELINGER) Is that a -- is that a far cry  
12 from 2.0 or 2.6 or 3 miles of lines that need to be laid?

13 MS. ROGERS: Objection, Your Honor. He's  
14 leading the witness.

15 JUDGE DAVIS: Mr. Selinger, I'm going to  
16 ask you to rephrase that question.

17 Q. (BY MR. SELINGER) Could you tell me the  
18 difference between 7.3 miles and 2.0 miles in distance of  
19 new lines that would need to be laid?

20 A. It's probably a little over five miles of lines  
21 to be added.

22 Q. Additional to the two?

23 A. Additional.

24 Q. Thank you.

25 MR. SELINGER: I pass the witness, Your

1 Honor.

2 JUDGE DAVIS: All right. And for recross,  
3 anything from the Executive Director?

4 MS. PAWELKA: No, Your Honor.

5 JUDGE DAVIS: Anything from OPIC?

6 MR. MARTINEZ: A couple of questions, Your  
7 Honor.

8 RECROSS-EXAMINATION

9 QUESTIONS BY MR. ELI MARTINEZ:

10 Q. You were asked about the sulfates and water  
11 quality standards.

12 Why is sulfate not a problem in your  
13 analysis with -- in complying with the water quality  
14 standards?

15 A. Sulfates aren't -- aren't -- are not in standard  
16 TPDES permits; so we don't consider them. Water --  
17 drinking water is processed through a reverse osmosis  
18 system to remove those or reduce those sulfates so it  
19 hasn't been a concern. Many lakes around the state that  
20 have the same situation.

21 In this case, City of Waxahachie puts 8  
22 million gallons a day in there on the -- straight through  
23 Waxahachie's water whereas we would be putting 500,000,  
24 (inaudible) 5 percent of what they do.

25 THE REPORTER: What -- what --

1 MS. ROGERS: Objection, Your Honor. That  
2 answer is nonresponsive.

3 JUDGE DAVIS: Overruled.

4 Continue, Mr. Gillespie.

5 A. All right. I was just answering his question.

6 Q. (BY MR. MARTINEZ) Do you know if the City of  
7 Ennis, their wastewater treatment plant, if they treat  
8 for sulfates?

9 A. They do not, as far as their permit  
10 requirements.

11 Q. And then you were also asked about mileage, the  
12 difference between the two and seven estimated miles for  
13 construction of the lines.

14 What -- do you have a ballpark figure of --  
15 as to what those -- the difference that those five miles  
16 of difference, what that would cost in real dollars?

17 A. Well, it's \$6.8 million for seven miles; so it's  
18 about a million -- a million dollars a mile, right,  
19 \$800,000 a mile.

20 Q. So about \$4 million, somewhere in that -- that  
21 neighborhood?

22 A. That'd be correct.

23 Q. Okay. I don't have any other questions. Thank  
24 you.

25 MS. ROGERS: I do.

1 JUDGE DAVIS: Yes, I was -- I'm moving on  
2 to Protestants.

3 RECROSS-EXAMINATION

4 QUESTIONS BY MS. EMILY ROGERS:

5 Q. Do you know what the source water is for the  
6 City of Ennis?

7 A. No, I do not specifically. I -- my assumption  
8 was it was Bardwell Lake.

9 Q. And do you know what the source water is for the  
10 City of Waxahachie?

11 A. Is Bardwell Lake.

12 Q. Have you had any discussions with the City about  
13 whether this development would be required to fund all of  
14 the infrastructure that's listed on Exhibit 4 of your  
15 testimony?

16 A. I think we've answered that before. But no,  
17 ma'am, I have not.

18 MS. ROGERS: I pass the witness.

19 JUDGE DAVIS: All right. Mr. Selinger,  
20 your final redirect of this witness.

21 MR. SELINGER: I am done, Your Honor.  
22 Thank you.

23 JUDGE DAVIS: All right. Thank you.

24 Thank you, Mr. Gillespie, for your testimony  
25 today.



1 Mr. Selinger, is -- are you resting your  
2 case now?

3 MR. SELINGER: Yes.

4 JUDGE DAVIS: All right. We're going to  
5 move on to the Executive Director.

6 MS. PAWELKA: Your Honor, at this time the  
7 Executive Director would like to call Josi Robertson to  
8 the stand.

9 JUDGE DAVIS: All right. I'm looking here.  
10 Ms. Robertson? There she is.

11 If you could unmute yourself, raise your  
12 right hand, state your name so I can swear you in.

13 THE WITNESS: Hello. Yes, I'm Josi  
14 Robertson.

15 JUDGE DAVIS: Do you swear or affirm that  
16 the testimony you're about to provide in this proceeding  
17 is the truth, the whole truth, and nothing but the truth?

18 THE WITNESS: Yes, Your Honor.

19 JUDGE DAVIS: All right. Thank you.

20 Okay. Go ahead, Ms. Pawelka.

21 DIRECT EXAMINATION

22 QUESTIONS BY MS. AUBREY PAWELKA:

23 Q. Ms. Robertson, if I were to ask you the same  
24 questions as are in your prefiled testimony, would your  
25 answers be the same today as they were then?

1           A.     Yes.

2                   MS. PAWELKA:   Your Honor, at this time the  
3   Executive Director offers into evidence ED-JR 1 through  
4   ED-JR 7.

5                   JUDGE DAVIS:   Give me one second.

6                   Do we have any objections to ED-JR 1 through  
7   ED-JR --

8                   Did you say 7 or 2nd?

9                   MS. PAWELKA:   7.

10                  JUDGE DAVIS:   7, okay.

11                  -- ED-JR 1 through ED-JR 7, do we have any  
12   objections?

13                  MR. SELINGER:   No, Your Honor.

14                  JUDGE DAVIS:   All right.   I'm not hearing  
15   any; so I'm going to admit ED-JR 1 through ED-JR 7.   All  
16   right.

17                  (ED-JR Exhibits 1, Exhibit 2, Exhibit 3,  
18                   Exhibit 4, Exhibit 5, Exhibit 6,  
19                   and Exhibit 7 admitted.)

20                  MS. PAWELKA:   At this time I would like to  
21   tender Ms. Robertson for cross-examination.

22                  JUDGE DAVIS:   Thank you.   And Mr. Selinger,  
23   you will begin.

24                  MR. SELINGER:   No questions, Your Honor.

25                  JUDGE DAVIS:   Okay.   OPIC?

1 MR. MARTINEZ: One quick one.

2 CROSS-EXAMINATION

3 QUESTIONS BY MR. ELI MARTINEZ:

4 Q. Ms. Robertson, do you consider algae when you're  
5 doing your dissolved oxygen model?

6 A. Yes, we do. And that is included in my model in  
7 the form of chlorophyll-a.

8 Q. Have you taken into consideration the  
9 respiration cycles, daytime, nighttime, and how that  
10 might impact the testimony --

11 A. So -- yes, so QUAL-TX is a steady-state model;  
12 so it doesn't simulate changes over a course of, like, a  
13 day or year. It's -- you know, it's one set of inputs  
14 and you get the outputs.

15 The algal production rate that is included  
16 in the model is intended to be used -- or is  
17 representative of sort of the net oxygen production from  
18 algae. So it's in the model; it's just one net value.

19 Q. Okay. So there wouldn't -- as far as the model  
20 is concerned, it wouldn't make a difference if they  
21 changed throughout the day. It takes kind of the -- the  
22 net output at the end of the day?

23 A. Yes, correct.

24 Q. And you don't foresee any problems in terms of  
25 product life, plant life, water quality, et cetera, for

1 there to be those changes throughout the day in oxygen  
2 levels due to the algorithm?

3 A. No. I don't have any information that would  
4 indicate algal growth would be a problem at this time,  
5 no.

6 Q. Okay. I don't think I have any other questions.  
7 Thank you.

8 JUDGE DAVIS: Thank you. Okay. Moving on  
9 to the Protestants.

10 CROSS-EXAMINATION

11 QUESTIONS BY STEFANIE ALBRIGHT:

12 Q. Hi, Ms. Robertson. My name is Stefanie  
13 Albright.

14 First of all, since 2008 has the TCEQ  
15 reevaluated the margin of safety for the QUAL-TX  
16 modeling?

17 A. No, not that I'm aware of.

18 Q. You mentioned on page 11 of your testimony that  
19 the combination of discharges at the full permitted flow  
20 and effluent limit concentrations paired with hot and dry  
21 summertime low flow conditions are unlikely to occur.

22 You would agree with me that hot and dry  
23 conditions are likely to occur; correct?

24 A. I'm sorry, I'm -- can you repeat the end of  
25 that?

1 Q. Sure. Would you agree with me that hot and dry  
2 condition are likely to occur?

3 A. Yes and -- yes.

4 Q. So are you saying that an entity discharging at  
5 its full permitted amount in the summer is unlikely to  
6 occur?

7 A. No. So the QUAL-TX model used to evaluate the  
8 dissolved oxygen, instream dissolved oxygen, we model it  
9 over the most sort of pessimistic conditions. That  
10 includes hot, dry summertime, low-flow conditions as well  
11 as modeling the effluent at its full permitted flow and  
12 effluent concentration.

13 Q. So have you or anyone else at the agency  
14 verified this assertion?

15 A. Assertion -- which assertion?

16 Q. Yes. Relating to the fact that the full  
17 permitted amount in the summer is unlikely to occur.

18 A. Yes. That information is a part of the -- I  
19 think it's ED-7 documentation or my -- my 7-ED  
20 submittal -- I'm sorry, I don't know the -- I forget the  
21 name of it.

22 Q. So has this information been verified in the  
23 field?

24 A. "In the field," could you explain that more?

25 Q. Like has there actually been --



1                   For this particular modeling, have you done  
2 site visits?

3           A.    No, I have not.

4           Q.    And do you know, has TCEQ done a field  
5 verification of the -- the assumptions in the QUAL-TX's  
6 modeling?

7           A.    No, we have not. There is no site-specific --  
8 we have not done a site visit of the -- this discharge or  
9 of the downstream water bodies that I'm aware of, no.

10          Q.    And do you know in general for the QUAL-TX  
11 modeling if the TCEQ has ever done any particular field  
12 or site testing relating to the assumptions?

13          A.    So the assumptions of -- which assumptions?  
14 Just --

15          Q.    The QUAL-TX modeling that -- if it gets -- going  
16 back to the question of the assumption of the full  
17 permitted flow and effluent limit concentrations paired  
18 with hot, dry, summertime, low-flow conditions unlikely  
19 to occur.

20          A.    So the conditions you just described, those are  
21 the model assumptions; so that's what we model the  
22 conditions at since they are the most pessimistic in  
23 terms of DO levels.

24          Q.    Why in your modeling did you ignore the  
25 consumption of oxygen in water resulting from algae

1 respiration during the dark hours?

2 A. Yes, as mentioned before, QUAL-TX is a  
3 steady-state model; so algae is -- the oxygen production  
4 from algae is represented as sort of a net or average  
5 value. It doesn't -- QUAL-TX doesn't make a distinction  
6 between, like, night and day. It's just a steady-state  
7 model.

8 Q. So I'm going to refer to your testimony on  
9 page 13 (sic), lines 27 to 30. Take a second to pull it  
10 up.

11 A. Uh-huh. Yes.

12 Q. Okay. You state that the modeling results  
13 indicate that effluent constituents return back to  
14 background levels by the time the discharge reaches  
15 Waxahachie Creek.

16 What effluent constituents are you referring  
17 to in this testimony?

18 A. So the effluent constituents I'm referring to  
19 are the ones that we use in the QUAL-TX modeling. The  
20 BOD or CBOD, ammonia nitrogen, and dissolved oxygen.

21 And "back to background," this is in  
22 reference to the other per -- not the Selinger permit.  
23 This is the WQ0015964001.

24 Q. Would you agree that the nitrate concentration  
25 in the stream is higher than ambient conditions after

1 discharge?

2 A. The -- sorry, the nitrate or ammonia --

3 Q. The nitrate, nitrate concentration.

4 A. So for dissolved oxygen modeling analysis, we  
5 don't look at the nitrate; we look at the ammonia value,  
6 ammonia nitrogen values.

7 Q. Would you agree that the sulfate concentration  
8 in the stream is higher than ambient conditions after  
9 discharge?

10 A. Again, with the dissolved oxygen modeling,  
11 sulfate is not a constituent that we look at or include.

12 Q. And would you agree that sulfate loading would  
13 continue downstream to Waxahachie Lake, to Waxahachie  
14 Creek, and then to Lake Bardwell?

15 A. Sulfate, again, looking at that is outside the  
16 scope of my review.

17 Q. Would you agree that there is a 303(d)  
18 impairment for sulfate in the receiving waters downstream  
19 of the proposed wastewater treatment plant?

20 A. Yes, there is a 303(d) listing on the 2020 list  
21 for sulfate in Lake Bardwell.

22 MS. ALBRIGHT: Your Honor, can we have just  
23 a quick minute?

24 JUDGE DAVIS: Yes.

25 MS. ALBRIGHT: Okay.

1 Q. (BY MS. ALBRIGHT) Okay. I have one additional  
2 question.

3 Ms. Robertson, If you do not conduct -- did  
4 not conduct a site visit to the site, how do you know  
5 that the QUAL-TX modeling is correct?

6 A. When you -- what do you mean by "correct"? Do  
7 you mean follows our procedures?

8 Q. That the -- that the information produced by the  
9 modeling is correct relating to the dissolved oxygen --

10 A. Yes. So when taking into account all the model  
11 inputs, no, I did not do a site visit. But it does  
12 include a lot of site visit information. Specifically,  
13 this includes flow and temperature information from USGS  
14 gage on Waxahachie Creek, includes water quality data  
15 from SWQM stations within Lake Bardwell.

16 So yeah, that's how I included those types  
17 of variables.

18 MS. ALBRIGHT: No further questions, Your  
19 Honor.

20 JUDGE DAVIS: Thank you.

21 Any redirect?

22 MS. PAWELKA: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 QUESTIONS BY MS. AUBREY PAWELKA:

25 Q. Ms. Robertson, has EPA approved of current SOPs

1 and IPs?

2 A. Yes.

3 Q. Are site visits required for application  
4 reviews?

5 A. No.

6 Q. Is TCEQ required to use the QUAL-TX model?

7 A. For this application or just in general?

8 Q. In general.

9 A. Yes. QUAL-TX is the main modeling used for  
10 stream and river bodies and is approved by EPA.

11 Q. Are there any other models you would be allowed  
12 to use instead of QUAL-TX?

13 A. Depending on the situation, there might be  
14 different models I think more applicable for other water  
15 body uses. But in this case QUAL-TX was the most  
16 appropriate.

17 MS. PAWELKA: No further questions, Your  
18 Honor.

19 JUDGE DAVIS: Thank you.

20 For recross, Mr. Selinger?

21 MR. SELINGER: No, Your Honor.

22 JUDGE DAVIS: All right. OPIC?

23 RECROSS-EXAMINATION

24 QUESTIONS BY MR. ELI MARTINEZ:

25 Q. Does QUAL-TX account for sulfates?



1 A. No, it does not.

2 Q. Do any of the other models that could have  
3 potentially been used that you were asked about?

4 A. Not that I'm aware. Sulfates are not a  
5 consideration that we have for dissolved oxygen modeling.

6 MR. MARTINEZ: No further questions. Thank  
7 you.

8 JUDGE DAVIS: And Protestants?

9 MS. ALBRIGHT: No further questions.

10 JUDGE DAVIS: All right. Did you have any  
11 final redirect, Ms. Pawelka?

12 MS. PAWELKA: No, Your Honor.

13 JUDGE DAVIS: All right. Thank you for  
14 your testimony, Ms. Robertson.

15 Ms. Pawelka, your next witness.

16 MS. PAWELKA: Your Honor, at this time the  
17 ED would like to call Jeff Paull to the stand.

18 JUDGE DAVIS: All right. There, I see him.

19 Hello, Mr. Paull, if you could raise your  
20 right hand, state your name, and then I will swear you  
21 in.

22 THE WITNESS: My name is Jeff Paull.

23 JUDGE DAVIS: Do you swear or affirm that  
24 the testimony you're about to provide in this proceeding  
25 is the truth, the whole truth, and nothing but the truth?

1 THE WITNESS: Yes, I do.

2 JUDGE DAVIS: Thank you.

3 All right, Ms. Pawelka.

4 DIRECT EXAMINATION

5 QUESTIONS BY MS. AUBREY PAWELKA:

6 Q. Mr. Paull, if I were to ask you the same  
7 questions as were in your prefiled testimony, would your  
8 answers be the same today as they were then?

9 A. Yes.

10 Q. Can you please identify ED-JP-1?

11 A. It's my prefiled testimony.

12 Q. Do you have any changes?

13 A. No.

14 MS. PAWELKA: Your Honor, at this time the  
15 Executive Director offers into evidence ED-JP-1 through  
16 ED-JP-3.

17 JUDGE DAVIS: Any objections to ED-JP-1 to  
18 ED-JP-3?

19 Hearing none, I'm going to admit ED-JP 1  
20 through ED-JP-3. Both have been admitted.

21 (ED-JP Exhibit 1, Exhibit 2,  
22 and Exhibit 3 admitted.)

23 MS. PAWELKA: At this time I tender  
24 Mr. Paull for cross-examination.

25 JUDGE DAVIS: All right. Mr. Selinger, do

1 you have any questions for this witness?

2 MR. SELINGER: No, Your Honor.

3 JUDGE DAVIS: All right. OPIC?

4 MR. MARTINEZ: Nothing from OPIC, Your  
5 Honor.

6 JUDGE DAVIS: All right. And Protestants?

7 MS. ROGERS: Yes, we have questions.

8 JUDGE DAVIS: Okay.

9 CROSS-EXAMINATION

10 QUESTIONS BY MS. EMILY DAVIS:

11 Q. Good morning, Mr. Paull.

12 Would you please turn to page 8 of your  
13 testimony.

14 A. Okay.

15 Q. At the top of your testimony, you state that  
16 "Permit limits for total dissolved solid including  
17 sulfate are not included in permits unless it has been  
18 demonstrated via a screening procedure that the facility  
19 is discharging TDS in amounts that cause an exceedance of  
20 water quality standards."

21 What -- when are those screening procedures  
22 performed?

23 A. According to our implementation procedures,  
24 they're performed on discharges above 1 million gallons  
25 per day for municipal permits.

1 Q. And are these screening -- screenings done after  
2 the issuance of the permits and after the facility is  
3 constructed?

4 A. Well, actually, they would, usually from my  
5 experience, be performed on -- on amendments to permits  
6 when we already have discharge data on levels of TDS  
7 being discharged because that's one of the components of  
8 the screenings that we perform. So if there's no --  
9 there's no effluent being discharged yet, then basically  
10 we can't perform a screening.

11 Q. So you mentioned the permit limits -- well,  
12 let's see.

13 Are you saying -- so if it's a new permit,  
14 you don't do any analysis of the source water; is that  
15 correct?

16 A. Will you please rephrase that question?

17 Q. For new permits you do not do any analysis of  
18 source water?

19 A. Analysis of source -- yeah, I think the answer  
20 is "no."

21 Q. And you agree that TCEQ does have a sulfate  
22 water quality standard; correct?

23 A. Yes. Our standards include sulfate criteria.

24 Q. And you would also agree that Lake Bardwell is  
25 currently not meeting water quality standards for

1 sulfate?

2 A. Correct.

3 Q. What existing uses are impaired by sulfate?

4 A. I think the TDS criteria protect the drinking  
5 water uses.

6 Q. And you're aware that Lake Bardwell is a  
7 drinking water -- a sole-source drinking water supply  
8 lake for the City of Ennis and the City of Waxahachie?

9 A. Yes.

10 Q. And do you know how sulfate gets removed from  
11 wastewater?

12 A. No, I'm not familiar with that.

13 Q. Do you know if this particular facility would be  
14 able to remove sulfates?

15 A. I'm not sure. I'm not familiar with that.

16 Q. You say on page 8 of your testimony that "the  
17 limits are sufficient to prevent water quality concerns  
18 related to bacteria and nitrate."

19 What methodology did you use to reach that  
20 conclusion?

21 A. For bacteria, recommended the limits equal to  
22 the segment criteria of -- so the criteria should be  
23 protected from a discharge of bacteria in this permit.

24 And nitrates, I followed the procedures in  
25 our standard implementation procedures to determine if



1 nitrate was concerned. And none of the -- none of the  
2 provisions were met.

3 Q. What are those provisions?

4 A. I have one of them in my prefiled testimony.  
5 Would you like me to read them? It's on page 9.

6 Q. Okay. No --

7 A. Starting with --

8 Q. My next -- my next question is about that; so --

9 A. Oh, okay.

10 Q. On page 9, lines 28 and 29, you state that  
11 "These conditions do not apply, and therefore, a nitrate  
12 limit was not recommended."

13 Can you tell me why does the first bullet,  
14 the No. 1, "growth of nuisance aquatic vegetation," why  
15 that does not apply?

16 A. Growth of nuisance aquatic vegetation is  
17 unlikely in my judgment based on the characteristics of  
18 the receiving water.

19 Q. What do you consider to be a nuisance aquatic  
20 vegetation?

21 A. Nuisance, it's -- I -- it is a kind of  
22 subjective -- what we call a narrative criteria. It's --  
23 it's something that would impair the in -- recreation  
24 or -- and enjoyment of the water.

25 Q. Would you agree with me that the presence of

1 nitrate and total nitrogen have the potential to increase  
2 algae in Lake Bardwell?

3 A. Total nitrate would...

4 Q. The presence of nitrate or total nitrogen have  
5 the potential to increase algae in Lake Bardwell;  
6 correct?

7 A. Potential is -- yeah, I guess I would say it has  
8 the potential.

9 Q. On page 10 of your testimony, lines 21 through  
10 22, you state that "the permit is designed to be  
11 protective of public drinking water supplies."

12 What methodologies did you use to reach that  
13 conclusion?

14 A. The -- the permit limits and the requirements of  
15 the permit are protective of drinking water intake  
16 standards.

17 Q. If -- if the effluents have high sulfates  
18 because the source of the -- of the water going into the  
19 wastewater treatment plant originated from ground water  
20 that was high in sulfates, is your conclusion still the  
21 same?

22 A. I haven't looked at how sulfates would mix with  
23 the receiving waters and the dilution that would -- that  
24 it would receive, and I can't provide you a -- because  
25 we -- our procedures don't permit us to perform a

1 screening in this scenario. So I -- I can't answer that  
2 question.

3 Q. If there are high levels of sulfate in the  
4 source water that is not treated to remove it, the  
5 additional sulfate from the source will increase the  
6 ambient concentrations and relative ratios of sulfate in  
7 the receiving water; correct?

8 A. Depending on the dilution -- because the  
9 discharge will include water as well; so the  
10 concentration would depend on, you know, the mixture of  
11 the effluent with the receiving water.

12 Q. But it will still add sulfate to the receiving  
13 water; correct?

14 A. In absolute amounts. But in concentration  
15 amounts, I'm not sure the concentration would increase.

16 Q. So if the concentration that is being discharged  
17 is higher than what is in the receiving water, then the  
18 concentration will increase; correct?

19 A. Yes.

20 Q. If the discharge contributes to an increase to  
21 an ex -- the discharge contributes to an existing  
22 impairment, it cannot pass the Tier 1 antidegradation  
23 test that the existing uses are protected; correct?

24 A. Can you please repeat that?

25 Q. If the discharge contributes to an existing

1 impairment, it cannot pass the Tier 1 antidegradation  
2 test that the existing uses are protected; correct?

3 A. Correct.

4 Q. And so if this particular wastewater treatment  
5 plant is discharging sulfates in high -- higher  
6 concentrations than what is in the already impaired  
7 receiving water, then it doesn't pass the Tier 1  
8 antidegradation test; is that correct?

9 A. I don't know about that.

10 MS. ROGERS: Just give me one more minute.  
11 Let me go off -- let me mute for a second.

12 We have no further questions.

13 JUDGE DAVIS: All right. Do you have any  
14 redirect, Ms. Pawelka?

15 MS. PAWELKA: Yes, Your Honor.

16 REDIRECT EXAMINATION

17 QUESTIONS BY MS. AUBREY PAWELKA:

18 Q. How did the application pass through the Tier 1  
19 antidegradation review?

20 A. How did it pass?

21 Q. Yes.

22 A. Oh --

23 Q. How did you -- yeah. Go ahead.

24 A. It passed --

25 Q. (Inaudible) --

1 A. (Inaudible).

2 Q. Could you explain -- could you explain how it  
3 passed?

4 A. Tier 1 protects the water quality uses, and the  
5 water quality uses will be protected.

6 MS. PAWELKA: No further questions.

7 JUDGE DAVIS: All right. Final recross,  
8 Mr. Selinger?

9 RECROSS EXAMINATION

10 QUESTIONS BY MR. STEPHEN SELINGER:

11 Q. Are you aware of any violations of law,  
12 including any regarding sulfates, in either the TCEQ  
13 analysis or the TCEQ draft permits?

14 A. No, I'm not.

15 MS. ROGERS: Ob -- object to that question.  
16 It's asking a legal conclusion, and he's not been put up  
17 as a legal expert.

18 JUDGE DAVIS: All right. Mr. Selinger, if  
19 you could rephrase, please.

20 Q. (BY MR. SELINGER) Are you aware that TCEQ is  
21 required to follow the law in its permits?

22 A. That's my belief.

23 Q. Are you aware of any violations of law in the  
24 recommended permit?

25 MS. ROGERS: Objection, Your Honor.

1 Objection, Your Honor. Same type question, he's asking  
2 about violations of law.

3 JUDGE DAVIS: Yes. This witness cannot  
4 testify as to violations of law, Mr. Selinger.

5 Q. (BY MR. SELINGER) Okay. Well, then let me  
6 ask: You -- you answered that TCEQ followed the law in  
7 its grant permit and analysis.

8 Did TCEQ follow the law in its grant permit  
9 and analysis, including any laws regarding sulfates?

10 MS. ROGERS: Objection, Your Honor. Again,  
11 the same issue. He's not --

12 JUDGE DAVIS: Yes, Mr. -- sustained.

13 Mr. Selinger, you're going to need to move  
14 on from this point.

15 MR. SELINGER: Nothing further, Your Honor.

16 JUDGE DAVIS: All right. Any -- any  
17 questions from OPIC?

18 CROSS-EXAMINATION

19 QUESTIONS BY MR. ELI MARTINEZ:

20 Q. You were asked -- well, you gave testimony about  
21 designating the uses and how there can't be degradation  
22 of those uses.

23 What -- what was the use that was set out  
24 for the receiving water?

25 A. As far as aquatic life pieces, the unnamed



1 tributary received a minimal aquatic life use, and  
2 Waxahachie Creek received an intermediate aquatic life  
3 use and their associated water quality criteria.

4 Q. Great. Thank you. No further questions.

5 JUDGE DAVIS: All right. And for  
6 Protestants.

7 JUDGE DAVIS: We have no additional  
8 questions.

9 JUDGE DAVIS: All right. Any final  
10 redirect?

11 MS. PAWELKA: No, Your Honor.

12 JUDGE DAVIS: All right. Thank you,  
13 Mr. Paull, for your testimony today.

14 Ms. Pawelka, who are you calling next?

15 MS. PAWELKA: Your Honor, at this time the  
16 Executive Director would like to call Abdur Rahim to the  
17 stand.

18 JUDGE DAVIS: Okay. Let's see here. There  
19 we are.

20 Hello, Mr. Rahim. If you could state your  
21 name for the record and raise your right hand so I can  
22 swear you in.

23 THE WITNESS: Yeah, my name is Abdur Rahim.

24 JUDGE DAVIS: Do you swear or affirm that  
25 the testimony you're about to provide in this proceeding

1 is the truth, the whole truth, and nothing but the truth?

2 THE WITNESS: Yes, I do.

3 JUDGE DAVIS: Thank you.

4 All right, Ms. Pawelka, you may proceed.

5 ABDUR RAHIM,

6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 QUESTIONS BY MS. AUBREY PAWELKA:

9 Q. Mr. Rahim, if I were to ask you the same  
10 questions as are in your prefiled testimony, would your  
11 answers be the same today as they were then?

12 A. Yes.

13 Q. Can you identify EDAR-1?

14 A. Yes.

15 Q. And do you have any changes?

16 A. No.

17 MS. PAWELKA: Your Honor, the Executive  
18 Director offers into evidence ED-AR-1 through ED-AR-2.

19 JUDGE DAVIS: Do we have any objections to  
20 ED-AR-1 through ED-AR-2?

21 All right. Hearing none, I'm going to admit  
22 ED-AR-1 and ED-AR-2.

23 (ED-AR Exhibit 1 and Exhibit 2 admitted.)

24 MS. PAWELKA: At this time I tender  
25 Mr. Rahim for cross-examination.

1 JUDGE DAVIS: Thank you.

2 Mr. Selinger, you may begin your cross.

3 MR. SELINGER: I pass the witness, Your  
4 Honor.

5 JUDGE DAVIS: All right. Then we can move  
6 on to OPIC.

7 CROSS-EXAMINATION

8 QUESTIONS BY MR. ELI MARTINEZ:

9 Q. Good morning still, Mr. Rahim.  
10 From your testimony it seems as though you  
11 don't have any proof that Mr. Selinger owned the land  
12 where the proposed treatment facility will be located.

13 Is that still -- I'm going to try hard not  
14 to refer to any facts that's not in evidence. But is  
15 that still your opinion as you sit here today?

16 A. Yes, I do have opinion that, in my review of the  
17 application, I see in Section 9, Page No. 21, it says  
18 owner of the treatment facility is Stephen Selinger and  
19 owner of the land where the treatment facility is or will  
20 be is also Stephen Selinger. So we do not have any  
21 further inquiry or question about the land ownership.

22 Q. Does -- you had stated that if the -- if the  
23 judge found that Mr. Selinger was not the owner, that you  
24 would not -- you would recommend denial of the  
25 application.

1           As you sit here today, do you still  
2 recommend denial of the application based on that -- on  
3 that point?

4       A.   Yes. I'm looking at the application, and then  
5 we do not have any record of the land ownership.  
6 However, we did find afterwards and -- the land is sold  
7 to somebody else, you know, reading the prefilled  
8 testimony for different folks. But in our record we do  
9 not have that -- we did not receive that -- receive any  
10 document from the Applicant yet. So we are depending on  
11 the application.

12       Q.   Yes, sir. Do you recommend denial based on that  
13 ownership issue as of today that's in your testimony?

14       A.   Yes. If Applicant does not own the land, then  
15 this -- the application could be denied. However, in the  
16 application if we see -- like Section 9, page No. 21 C  
17 and D, if we will see the different person, definitely we  
18 would have asked -- at least recommend our -- another  
19 contract with the own -- or contract with the third party  
20 who owned the land. But in that time we saw the same  
21 person owning the land and owning the facility that the  
22 treatment plant will be -- the land -- the treatment  
23 plant will be. So we did not ask any question.

24       Q.   Okay. I'm sorry, I don't mean to belabor the  
25 point, I'm just -- I'm not sure that I understood

1 correctly whether or not you are today recommending  
2 denial based on the issue of ownership.

3 A. Yes. Yes. I mean, if -- if the Applicant does  
4 not own the land or facility that the -- will be in that  
5 land, then -- then, you know, this permit could deny.

6 Q. Okay. And you don't have any information as of  
7 today that would indicate that Mr. Selinger does, in  
8 fact, own that property and is eligible to apply for the  
9 permit that's been requested?

10 A. No, nothing is submitted to the TCEQ.

11 Q. Okay. Thank you. That answers my question.  
12 Thank you very much.

13 MR. MARTINEZ: I pass the witness.

14 JUDGE DAVIS: Okay. Protestants?

15 MS. ROGERS: Yes, I have some more  
16 questions. Okay.

17 CROSS-EXAMINATION

18 QUESTIONS BY MS. EMILY ROGERS:

19 Q. Okay. If you could turn to page 4, lines 21  
20 through 23 of your testimony, you outline what the  
21 Applicant is required to determine before filing the  
22 application. You state that the Applicant -- the  
23 Applicant is to determine whether any permitted  
24 wastewater treatment facility or collection system are  
25 located within a three-mile radius of the proposed plant.

1                   So this inquiry is not limited to the  
2 wastewater treatment plant; correct?

3           A.     Can you repeat it again, ma'am.

4           Q.     Let me get to that page in your testimony. I'm  
5 sorry. Okay.

6                   Your testimony on page 4, lines 21 through  
7 23 states that the application -- the Applicant is also,  
8 in terms of regionalization, to determine whether there  
9 are any domestic permitted wastewater treatment  
10 facilities or collection systems located within a  
11 three-mile radius of the proposed facility; correct?

12          A.     Yes.

13          Q.     So the inquiry is not limited simply to located  
14 within a three-mile radius of a wastewater treatment  
15 facility; correct?

16          A.     Yes. I -- we look at -- in our -- in my review  
17 there is none, there is no other treatment facilities  
18 within three miles radius of this proposed facility.

19          Q.     They're also supposed to look at whether or not  
20 they're within a three-mile radius of a collection  
21 system; correct?

22          A.     Yes.

23          Q.     And you understand from hearing Mr. Green or  
24 reading Mr. Green's testimony and Mr. Buechter -- his  
25 name is hard -- the testimony that Ennis's collection



1 system is within a three-mile radius of the proposed  
2 wastewater treatment plant; correct?

3 A. Yes.

4 Q. And if you would look on page -- it's in the  
5 admin record, it's -- I'm gonna -- it's in the  
6 application, at Tab D of the admin record in the  
7 application. And it's Bates labeled page 99, but it's 22  
8 of 80, if that helps you.

9 A. 22...

10 Q. If we can pull it up on the computer screen, if  
11 you would --

12 A. Yes, I got that. 22 of 80.

13 MS. ALBRIGHT: So we're going to go ahead  
14 and share it on our -- on the screen, if that's okay.

15 Okay. I don't know if it's allowing us  
16 to -- there it goes.

17 Q. (BY MS. ROGERS) And so what is the first  
18 question under No. 3?

19 A. Yeah, first question is the nearby wastewater  
20 treatment plants or collection system; the Applicant said  
21 "yes," and then they submit attachment on that.

22 Q. Could you read -- could you read that question  
23 into the record? Under No. 3, the first question under  
24 No. 3.

25 A. Okay. "Are there any domestic permitted

1 wastewater treatment facilities or collection systems  
2 located within a three-mile radius of the proposed  
3 facility?"

4 Applicant said "yes."

5 Q. And you would agree with me based on this that  
6 the Applicant is required to reach out to systems with  
7 collection systems within a three-mile radius of the  
8 proposed facility; correct?

9 A. Yes.

10 Q. And so turning back to your testimony on page 8,  
11 lines 18 through 19, you state -- the question was "Is  
12 the Applicant required to con" -- "to contract" or  
13 contact -- "contract with Ennis for wastewater service?"

14 And your answer is "No, because the City of  
15 Ennis's wastewater treatment facility is not located  
16 within three-mile radius of the proposed wastewater  
17 treatment facility."

18 You would agree with me that your statement  
19 that --

20 You would agree with me that the Applicant  
21 was required to contact the City of Ennis because its  
22 facilities were within -- because its collection  
23 facilities were within a three-mile radius; correct?

24 A. Yeah, collection system is within three miles,  
25 but the facility is not located -- the facility -- I

1 mean, WWTP -- Ennis's WWTP is not located within three  
2 miles radius in my review.

3 Q. Okay. And the Applicant didn't provide any  
4 information regarding service from Ennis in its  
5 application; correct?

6 A. No.

7 Q. And the Applicant didn't include with the  
8 application any analysis of expenditures required to  
9 connect to the City of Ennis's system as part of its  
10 application; correct?

11 A. No, ma'am.

12 MS. ROGERS: Could you pull up Section --  
13 Texas Water Code, Section 26.0282?

14 Q. (BY MS. ROGERS) You stated in your testimony  
15 that the TCEQ has not denied a permit based on  
16 regionalization. But you would agree with me that the  
17 TCEQ does have the authority to deny a permit based on  
18 regionalization based on this section?

19 A. Yes. TCEQ policy on regionalization does not  
20 require, as I said, to deny any wastewater permit  
21 application.

22 Q. I would like for you to turn to page 13 of 21 of  
23 the -- of the application that's Tab D.

24 A. Page 13.

25 Q. The Bates number is --

1 A. Yes, I'm on the -- page 13.

2 Q. And tell me what this page is.

3 A. This page, the Applicant sworn in by signing in  
4 front of notary public. The autograph is submitted, and  
5 the application is true and correct.

6 Q. And you would agree with me, based on the  
7 information that has been provided by Mr. Osting about  
8 the ownership of the property when this application was  
9 filed, that Mr. Selinger was not the owner of the  
10 property; correct?

11 A. Yes.

12 Q. And so the information in the application is not  
13 true and correct as he certified; correct?

14 A. Yes.

15 MS. ROGERS: I don't have any additional  
16 questions.

17 JUDGE DAVIS: Ms. Pawelka, your redirect?

18 MS. PAWELKA: No questions, Your Honor.

19 JUDGE DAVIS: All right. Thank you,  
20 Mr. Rahim, for you testimony today.

21 MR. SELINGER: Hol -- hold it. Your --  
22 Your Honor -- Your Honor, I have questions.

23 JUDGE DAVIS: No, Mr. Selinger. You would  
24 only be allowed to ask questions based on redirect asked  
25 by the ED. They've opted not to, and so there's no

1 opportunity for recross.

2 MR. SELINGER: Well, we brought in new  
3 information, Your Honor, in regard to Mr. --

4 JUDGE DAVIS: Mr. Selinger, I'm -- I'm  
5 sorry. You had -- you started the cross-examination.  
6 That was your opportunity to ask questions. You elected  
7 not to talk about the subject for whatever reason, and  
8 that was your opportunity. And there will be no recross  
9 because there's no redirect.

10 MR. SELINGER: When does rebuttal start?

11 JUDGE DAVIS: There's no rebuttal,  
12 Mr. Selinger.

13 MR. SELINGER: Really?

14 JUDGE DAVIS: All right. Ms. Pawelka, let's  
15 move on.

16 MS. ROGERS: I --

17 MS. PAWELKA: We -- the ED rests the case.

18 JUDGE DAVIS: Okay. Ms. Rogers, did you  
19 have something?

20 MS. ROGERS: No, I was just not sure if I  
21 said I didn't have any further questions of --

22 JUDGE DAVIS: Oh --

23 MS. ROGERS: -- him; so --

24 JUDGE DAVIS: -- gotcha. Okay. Thank you.  
25 Thank you.

1 All right. So the ED rests. Okay.

2 At this time let me just get my documents.

3 Give me one minute.

4 MR. SELINGER: I have another request too,  
5 Your Honor.

6 JUDGE DAVIS: Go ahead, Mr. Selinger.

7 MR. SELINGER: You denied Exhibit No. 8,  
8 the Warranty Deed from Poetry Road, Stephen Selinger,  
9 dated December 7th on the basis that it was not offered  
10 in prefiled testimony as an exhibit.

11 The prefiled testimony was due before that.  
12 And I think we all know Stephen Selinger owns the  
13 property. And I think that Warranty Deed should be  
14 admitted into evidence. Mr. Osting's already testified  
15 that Mr. Selinger owns the property. But to tidy things  
16 up, I think that deed should be put into evidence.

17 MS. ROGERS: Again, I would object that it  
18 be admitted into evidence. Mr. Osting's testimony was  
19 prefiled before he prefiled. He could have addressed it  
20 in his prefiled testimony.

21 JUDGE DAVIS: Yes, this -- we've already --  
22 I've already ruled on this. And so I understand that  
23 you're re-urging it, but my ruling is the same. We will  
24 not be admitting that exhibit. It wasn't timely -- it  
25 wasn't prefiled.



1 MR. SELINGER: It was not possible to be  
2 prefiled at that time. It didn't exist at that time.

3 MR. MARTINEZ: Your Honor, I don't have the  
4 timelines in front of me, but I do believe the Executive  
5 Director moved to introduce the -- the issue. Perhaps  
6 that --

7 JUDGE DAVIS: Yes --

8 MR. MARTINEZ: -- (inaudible) --

9 JUDGE DAVIS: -- it -- that is true, they  
10 moved to address it. There was a deadline for prefiling  
11 testimony. And I don't believe I received any  
12 testimony -- I don't believe I received anything. There  
13 was nothing that was prefiled by the deadline that was  
14 set in that order.

15 MR. SELINGER: Well, the exhibit did not  
16 exist at the time of the prefiled testimony. Okay? It's  
17 very clear.

18 JUDGE DAVIS: Give me one second to look at  
19 the filings.

20 MS. ROGERS: Judge, I believe it was  
21 January 10th was the deadline to prefile -- the parties  
22 to prefile exhibits relating to land ownership.

23 JUDGE DAVIS: Yes, that is correct. And  
24 I'm -- that's what I'm pulling up and looking at. And  
25 I'm not seeing -- there was the November deadline, and

1 then this was a new deadline that was set in January.

2 And again, I'm not seeing -- I'm not changing my ruling  
3 because it was not timely prefiled.

4 MR. SELINGER: Why would you not want to  
5 know the truth of who owns the land?

6 JUDGE DAVIS: Mr. Selinger, there are rules  
7 of procedure for this type of thing. There are deadlines  
8 to ensure fairness. And so we are abiding by those  
9 rules, and so those exhibits are not going to be  
10 admitted.

11 All right. Give me one minute now to  
12 just -- pulling up our procedural schedule. And it looks  
13 like there's a short -- very short briefing window, and  
14 I'm just confirming that that's all right with the  
15 parties, February 2nd and February 9th.

16 MR. MARTINEZ: Your Honor, can I -- can I  
17 briefly just state as -- as public interest counsel, I  
18 feel it's my duty to inform Mr. Selinger, you can make an  
19 offer of proof of that exhibit if you want to have any  
20 hope of preserving that for appeal.

21 MR. SELINGER: I would like to make an  
22 offer of proof, then. Do I do that now or in the --

23 JUDGE DAVIS: We'll -- we'll do that at the  
24 end. We'll take that up at the end.

25 All right. So let's -- let me just finish

1 up the -- everyone's all on the same page for the  
2 briefing deadlines?

3 MS. ROGERS: That is fine with us.

4 MR. SELINGER: Yes, Your Honor.

5 JUDGE DAVIS: That's fine? Okay.

6 And is there any other matter that needs to  
7 be taken up before Mr. Selinger does an offer of proof?

8 No? Okay.

9 All right, Ms. Cox, are you all right to  
10 do -- well, you're here for the whole day. Excuse me.  
11 Do you need a break or anything or --

12 THE REPORTER: No, I'm fine.

13 JUDGE DAVIS: Okay. All right,  
14 Mr. Selinger. You can do your offer of proof for the  
15 exhibits that you would have liked to have had admitted.

16 MR. SELINGER: My offer of proof on  
17 Exhibit 6 is -- and I must say I am not familiar with the  
18 intricacies of offer of proof. But the proof is I own  
19 the land individually. Part of the -- also is I  
20 thoroughly put forth my papers. There is a -- when the  
21 TCEQ says "land ownership," they did not specify whether  
22 it's equitable land ownership or record land ownership.

23 As an offer of proof, I would like to put in  
24 something from Westlaw and another MLS that it's a common  
25 term, that equitable ownership coincides with the

1 purcha -- person who's in escrow to buy a piece of  
2 property, which I was.

3           So on top of the TCEQ application being  
4 ambiguous on whether they wanted record ownership or  
5 equitable ownership, my offer of proof is the recorded  
6 deed has been given to people on more than one occasion,  
7 everyone in this room. Everyone knows it. And that  
8 should be in evidence.

9           JUDGE DAVIS: All right. Thank you,  
10 Mr. Selinger, for your offer of proof.

11           I think we are ready to conclude the  
12 hearing. And we can go off the record.

13           (Proceeding concludes at 11:43 A.M.)

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1 STATE OF TEXAS )

2 DALLAS COUNTY )

3

4 This is to certify that I, Shawna Hogan Cox,  
5 Certified Shorthand Reporter in and for the State of  
6 Texas, certify that the foregoing Civil Service Hearing  
7 was reported stenographically by me at the time and  
8 place indicated, and that the transcript is a true  
9 record of the proceedings.

10 I further certify that I am neither counsel for,  
11 related to, nor employed by any of the parties in the  
12 action in which this proceeding was taken, and further  
13 that I am not financially or otherwise interested in the  
14 outcome of the action.

15 GIVEN under my hand of office on this the 26th  
16 day of January, 2023.

17

18

19

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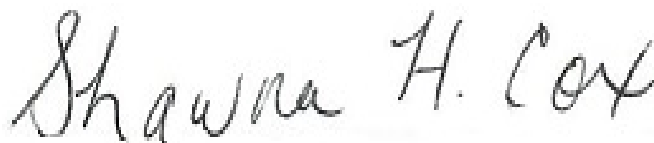
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Status as of 5/18/2023 9:55 AM CST

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